...ice - Supreme Court, U.S.
FILED
SEP 13 1957
JOHN T. FEY, Clerk

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 195 .

NO. 459 & 449

HUMBLE OIL & REFINING COMPANY,

Petitioner,

versus

FEDERAL POWER COMMISSION,

Respondent.

---ooOoo---

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

UNITED STATES OF AMERICA
UNITED STATES COURT OF APPEALS
FIFTH JUDICIAL CIRCUIT.

PLEAS AND PROCEEDINGS had and done at a regular term of the United States Court of Appeals for the Fifth Circuit, begun on the first Monday in October, A.D., 1956, before the Honorable Wayne G. Borah, the Honorable Richard T. Rives, and the Honorable John R. Brown, Circuit Judges:

HUMBLE OIL & REFINING COMPANY,

Petitioner

versus

FEDERAL POWER COMMISSION,

Respondent

BE IT REMEMBERED, That heretofore, to-wit, on the 19th day of December, A.D., 1955, a petition for review of an order of the Federal Power Commission was filed in the office of the Clerk of the said United States Court of Appeals as No. 15884; and on February 24, 1956, an order was entered allowing one transcript of record to be filed covering cases Nos. 15849, 15884 and 15900, which transcript was filed in said Court of Appeals as No. 15849, as follows, to-wit:-

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UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

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PETITIONER'S DESIGNATION AS TO PRINTING RECORD.

Filed February 29, 1956.

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 15849, No. 15884, No. 15900.

DEEP SOUTH OIL COMPANY OF TEXAS,
Petitioner,

versus

FEDERAL POWER COMMISSION,
Respondent,

HUMBLE OIL REFINING COMPANY,
Petitioner,

versus

FEDERAL POWER COMMISSION,
Respondent,

SHELL OIL COMPANY,
Petitioner,

versus

FEDERAL POWER COMMISSION,
Respondent.

Now come the petitioners in the above-entitled proceedings pursuant to Rule 38 of the Rules of this Court and designate for printing in this Court the following pleadings in the proceedings of the several petitioners

before the Federal Power Commission, including the decision and order of the Federal Power Commission:

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Motion of Humble Oil & Refining Co. to consolidate and petition for leave to intervene, Docket Nos. G-2952, G-4671, and G-5261, filed November 26, 1954	5	1051
Petition of Humble Oil & Refining Company for a declaratory order, Docket No. G-5261, filed November 26, 1954	7	1528
Petition of Shell Oil Company for a declaratory order, Docket No. G-4671, filed November 5, 1954	7	1552
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Memorandum of Presiding Examiner to the Commission with respect to motion for omission of the intermediate decision procedure by Staff counsel, filed January 12, 1955	5	1064

Description of Document	Volume	Page
Order denying motion to omit the intermediate decision procedure, issued January 25, 1955	5	1065
Decision of Presiding Examiner upon petitions for orders to remove uncertainties as to status In the Matters of Deep South Oil Company of Texas, et al., Docket No. G-2952, et al., issued April 5, 1955	5	1078
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Exceptions of Shell Oil Company to the decision of the Presiding Examiner and Brief in support of exceptions filed May 25, 1955	6	1353
Opinion No. 284 and order of the Commission affirming Examiner's decision issued September 9, 1955	6	1387
Application of Deep South Oil Company for rehearing, filed October 7, 1955	6	1504
Application of Humble Oil & Refining Company for rehearing, filed October 4, 1955	6	1425
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ROLAND C. KIZER,
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Baton Rouge, Louisiana.

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New York 20, N. Y.

BERNARD A. FOSTER, JR.
(Bernard A. Foster, Jr.).
Counsel for Humble Oil & Refining Company.
725 Fifteenth Street,
Washington 5, D. C.

February 28, 1956.

CERTIFICATE OF SERVICE.

I certify that I have this day served a copy of the foregoing Designation of Record to be Printed in this Court upon the respondent Federal Power Commission by Placing a copy of such Designation in an envelope addressed to the Secretary of the Federal Power Commission, Wash-

ington 25, D. C., and by depositing such envelope, postage prepaid, in the United States mail.

HAROLD M. WILLCOX,
(Harold M. Willcox).

Feb. 28, 1956.

RESPONDENT'S DESIGNATION AS TO PRINTING RECORD.

Filed March 10, 1956.

In the United States Court of Appeals for the Fifth Circuit.

Deep South Oil Company of Texas, Petitioner,
v. No. 15849
Federal Power Commission, Respondent,

Humble Oil & Refining Company, Petitioner
v. No. 15884
Federal Power Commission, Respondent,

Shell Oil Company, Petitioner
v. No. 15900
Federal Power Commission, Respondent,

Response of Federal Power Commission to Designation by Petitioners.

Now comes respondent Federal Power Commission and gives its consent to the joint designation executed by petitioners in the above entitled cases, copy of which

designation is attached hereto. Respondent Federal Power Commission further states that there are no portions of the pleadings other than those designated in the aforesaid designation upon which respondent Federal Power Commission intends particularly to rely.

Respectfuly submitted.

WILLARD W. GATCHELL,
(Willard W. Gatchell),
General Counsel.

WILLIAM L. ELLIS,
(William L. Ellis),
Attorney.

Counsel for Respondent, Federal Power Commission, Washington 25, D.C.

March 2, 1956.

CERTIFICATE OF TRANSCRIPT OF THE RECORD

Filed Dec. 14, 1955.

In the United States Court of Appeals for the Fifth Circuit.

Deep South Oil Company of Texas, Petitioner,
v. No. 15,849
Federal Power Commission, Respondent.

Pursuant to Section 19 (b) of the Natural Gas Act and Rule 38(1) of this Court, the Federal Power Commission, in connection with the above-entitled proceedings, hereby certifies that the documents listed below and,

(except for certain materials incorporated in those documents by reference) attached hereto, constitute the transcript of the record upon which the Commission's Opinion No. 284 and Order issued September 9, 1955, in Docket Nos. G-2952, G-5261, and G-4671 complained of herein was entered In the Matters of Deep South Oil Company of Texas, et al.

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Transcript of hearing held November 30, 1954	1	148
Transcript of hearing held December 1, 1954	2	316
Transcript of hearing held December 2, 1954	2	455
Transcript of hearing held January 10, 1955	3	484
Errata transcript, dated February 11, 1955	3	596
Transcript of oral argument heard June 13, 1955	3	610

The Exhibits set forth below were offered and admitted in evidence at the hearings held November 29, 30; December 1, and 2, 1954 and January 10, 1955.

Exhibit No.	Description of Document	Volume	Page
1	Map, entitled "Wells and Leases under contract, Crane District, Phillips Petroleum Company, Bartlesville, Oklahoma"	4	701
2	Contract, entitled "Supplement to Casinghead Gas Contract"	4	702
3	Tabulation and Statement, entitled "Laboratory Report by Independent Laboratory"	4	722
4	Gas statement, entitled "Phillips Petroleum Company, Bartlesville, Oklahoma"	4	723

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5	Flow chart of Crane Gasoline Plant of the Phillips Petroleum Company	4	724
6	Map of gathering system of Texas Gas Corporation entitled "Texas Gas Corporation, Houston, Texas, Location of Facilities"	4	725
7	"Shell Oil Company, Nome Field, Jefferson County, Texas"	4	726
8	Map showing Wells in the Nome Field, Jefferson County, Texas, Shell Oil Company	4	727
9	Contract between Texas Gas Corporation, Shell Oil Company and Texas Gas Pipeline Corporation, first page being letter agreement between those 3 companies, and attached to letter, agreement is a contract between Shell Oil Co., as seller, and Texas Gas Pipeline Corp., as buyer	4	728
10	Gas Analysis entitled "Southern Petroleum Laboratories"	4	772
11	Map entitled "Vacuum and residue Lines, Crane District, Phillips Petroleum Co., Bartlesville, Oklahoma	4	776
12	Wells in North Big Hill Area, Jefferson County, Texas, from which Deep South Oil Company sells Gas	4	777
13	Sales Contract between McCarthy Chemical Co., and Deep South Oil Co.	4	778
14	Ltr. Amendment to Sales Contract	4	801
15	Annual Sales of Gas by Deep South Oil Co., in the North Big Hill Area, Jefferson County, Texas, March 1, 1952—September 30, 1954	4	804

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16	Gas Purchase Contract Deep South Oil Co., et al., and United Gas Pipe Line Co.	4	805
17	Deep South Oil Co., of Texas, Typical Casinghead Gas Installation, Big Hill Field	4	830
18	Deep South Oil Co., of Texas, Typical Full Stream Gas Installation, Big Hill Field, Texas	4	831
19	Gas Analyses—8 pages, Deep South Oil Company	4	832
20	Hydrocarbon Analysis of Separator Gas sample, Deep South Oil Company, Security State Bank Wells No. 5 and 6	4	840
21	Texas Gas Corporation, Average Daily & Annual Sales Volumes, June, 1953 —May 31, 1954	4	842
22	Refugio, Gas Sales to United, Distillate Sales to Atlantic	4	843
23	Casinghead Gas Processing Plant and Lease Gathering and Residue System	4	844
24	Casinghead Gas Processing Plant	4	845
25	List of Casinghead Gas Contracts—6 pages	4	846
26	Casinghead Gas Contract, between Humble and Shell Oil, January 7, 1941 (Std. Form—1932)	4	852
27	Casinghead Gas Contract, between Humble Oil and El Paso Natural, August 15, 1952—Std. Form—1939	4	862
28	Gas Division Order, May 24, 1946, to Phillips Petroleum	4	870
29	Casinghead Gas Settlement, June 1954	4	876

Exhibit No.	Description of Document	Volume	Page
30	Casinghead Gas Settlement, September 1954	4	878
31	Telegram to FPC from Humble Oil, November 3, 1954, signed by Rex G. Baker	4	879
32	Telegram to Humble Oil from FPC, November 5, 1954, signed Leon M. Fuquay, Secretary	4	883
33	Railroad Commission of Texas, certified pages 31-K, 31-L, 31-M, 31-N, 31-O, 31-P, 'Transmission System Sales of Natural Gas—State of Texas, 12 months ended Dec. 31, 1953' from Annual Report, United Gas Pipe Line Co., Shreveport, La., year ended December 31, 1953	4	884
34	Railroad Commission of Texas, certified page 39, "General Information", and certified page 40, 'Segregation of Intra-State and Inter-State Gas Operations for the year', from Annual Report of the United Gas Pipe Line Co., Shreveport, La., for the year ended December 31, 1953	4	891
35	Railroad Commission of Texas, certified page 40-A, 'Segregation of Intra-State and Inter-State Gas Operations for the year 1953' from Annual Report of the United Gas Pipe Line Co., Shreveport, La., for the year ended December 31, 1953	4	894
36-A	Cert. of Analysis 11299, Security Bank No. 1 Well, Big Hill, Jefferson Co., Texas	4	896

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36-B	Cert. of Analysis 11492, Security Bank No. 4 Well	4	897
36-C	Cert. of Analysis 11298, Security Bank No. 5 Well	4	898
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36-E	Cert. of Analysis 11495, Security Bank No. 7 Well	4	900
36-F	Cert. of Analysis 11296, Security Bank No. 8 well	4	901
36-G	Cert. of Analysis 11494, Security Bank No. 9 Well	4	902
36-H	Cert. of Analysis No. 11571, Security Bank No. 10 Well	4	903
36-I	Cert. of Analysis No. 11572, Security Bank No. 11 Well	4	904
36-J	Cert. of Analysis No. 11493, Security Bank No. 11 Well	4	905
36-K	Cert. of Analysis No. 11639, Security Bank Delta Gulf No. 1 Well	4	906
36-L	Cert. of Analysis No. 11630, Security Bank-Delta Gulf No. 2-C Well	4	907
36-M	Cert. of Analysis No. 11631, Security Bank-Delta Gulf No. 2-T Well	4	908
36-N	Cert. of Analysis No. 11617, J. M. Mitchell Lease, Well B-2, Mission River Field, Refugio County, Texas	4	909
37	Photograph of Security Bank Well No. 4	4	910
38	Photograph of Security Bank Well No. 8	4	911
39	List of Annual Reports for 1953, FPC Form No. 2, to be Offered in Evidence by Deep South Oil Company of Texas under Rule 1.26(c)(2)	4	912

The items set forth below are the pleadings and other papers filed in this matter.

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Petition of Deep South Oil Company of Texas for a declaratory order, Docket No. G-2952, filed September 22, 1954	5	914
Order fixing date of hearing issued October 28, 1954	5	948
Petition to intervene by Texas Gas Corporation filed November 17, 1954	5	950
Order consolidating proceedings and fixing date of hearing, Docket Nos. G-2952, G-4450, and G-4671, issued November 18, 1954	5	956
Petition of Kansas Natural Gas, Inc., to intervene filed November 18, 1954	5	958
Petition of Shell Oil Company for leave to intervene in support of petition for a declaratory order by Deep South Oil Company, filed November 18, 1954	5	963
Amended and supplemental petition of Deep South Oil Company for a declaratory order, filed November 22, 1954	5	1013
Designation of Presiding Examiner, dated November 24, 1954	5	1050
Motion of Humble Oil & Refining Co. to consolidate and petition for leave to intervene, Docket Nos. G-2952, G-4671, and G-5261, filed November 26, 1954	5	1051
Order further consolidating proceedings and permitting interventions, Docket Nos. G-2952, G-4671, and G-5261, issued December 14, 1954	5	1060

Description of Document	Volume	Page
Telegram from Shell Oil Co. requesting postponement of hearing, filed January 3, 1955	5	1062
Memorandum of Presiding Examiner to the Commission with respect to motion for omission of the intermediate decision procedure by Staff counsel, filed January 12, 1955	5	1064
Order denying motion to omit the intermediate decision procedure, issued January 25, 1955	5	1065
Motion of Staff counsel for extension of time for filing Brief, filed February 21, 1955	5	1067
Notice of extension of time for filing Brief, dated February 21, 1955	5	1069
Presiding Examiner's certification of the record accompanying initial decisions, filed April 4, 1955	5	1071
Decision of Presiding Examiner upon petitions for orders to remove uncertainties as to status In the Matters of Deep South Oil Company of Texas, et al., Docket No. G-2952, et al., issued April 5, 1955	5	1078
Motion of Deep South Oil Company for permission to present oral argument and for an extension of time to file exceptions and briefs, filed April 11, 1955	5	1138
Motion of Humble Oil & Refining Company for extension of time and request for oral argument, filed April 11, 1955	5	1141
Telegram from Shell Oil Company requesting permission to present oral argument, filed April 14, 1955	5	1146

Description of Document	Volume	Page
Order extending time for filing exceptions and fixing date for oral argument, issued April 20, 1955	5	1148
Letter from Humble Oil & Refining Company to FPC requesting change of date for oral argument, filed April 26, 1955	5	1149
Order changing date of oral argument issued May 2, 1955	5	1150
Letter from Counsel for Kansas Natural Gas, Inc. requesting permission to participate in oral argument, filed May 20, 1955	5	1151
Letter from Counsel for Humble Oil & Refining Company requesting time for oral argument, filed May 23, 1955	5	1152
Exceptions of Humble Oil & Refining Company to decision of Presiding Examiner and Brief in support thereof, filed May 23, 1955	5	1153
Notice of continuance of oral argument dated May 24, 1955	5	1215
Letter from Counsel for Shell Oil Company requesting time for oral argument, filed May 26, 1955	5	1216
Exceptions of Deep South Oil Company to the decision of the Presiding Examiner, filed May 25, 1955	6	1217
Brief of Deep South Oil Company in support of its exceptions to the decision of the Presiding Examiner, filed May 25, 1955	6	1251
Brief and exceptions of Kansas Natural Gas, Inc. to the decision of the Presiding Examiner, filed May 25, 1955	6	1335

Description of Document	Volume	Page
Exceptions of Shell Oil Company to the decision of the Presiding Examiner and Brief in support of exceptions filed May 25, 1955	6	1353
Opinion No. 284 and order of the Commission affirming Examiner's Decision issued September 9, 1955	6	1387
Application of Humble Oil & Refining Company for rehearing, filed October 4, 1955	6	1426
Application of Deep South Oil Company for rehearing, filed October 7, 1955	6	1504
Petition of Shell Oil Company for rehearing, filed October 7, 1955	6	1521
Order denying rehearing issued November 4, 1955	6	1527

The items set forth below were offered in evidence by reference to the files of the Commission.

Item No.	Description of Document
A	Exhibit No. 11, Docket No. G-2405
B	Exhibit No. 11-A, Docket No. G-2405
C	Testimony of John T. Ashford, Docket No. G-2405, Pages 123 to 152
D	Exhibit No. 20, Docket No. G-2405
E	Exhibit No. 21, Page 1, Docket No. G-2405
F	Humble Oil & Refining Co., Application for rehearing in Docket No. R-138, August 12, 1954
G	Humble Oil & Refining Co., Casinghead Gas Contracts and applications for certificates of public convenience and necessity in relation thereto.
H	Portions of testimony of witness John T. Ashford, Docket No. G-2405, line 8, page 70 thru line 21, page 71; and his testimony at line 13, page 152 and thru line 12, page 160

Item No.	Description of Document
I	Exhibit No. H (5)(cc) in Docket No. G-2208, Texas Eastern Transmission Corporation
J	Schedules 73, 74, 75, 79, and 80 of annual reports for 1953 of companies listed in Exhibit No. 39.

By the Commission.

In Witness whereof I have hereunto subscribed my name and caused the seal of the Federal Power Commission to be affixed this 12th day of December 1955, at Washington, D. C.

(Signed) LEON M. FUQUAY,
Secretary.

(Seal)

PETITION OF DEEP SOUTH OIL COMPANY OF TEXAS TO REVIEW AND TO SET ASIDE AN ORDER OF THE FEDERAL POWER COMMISSION.

Filed November 5, 1955.

In the United States Court of Appeals for the Fifth Circuit.

Deep South Oil Company of Texas, Petitioner,
v. No. 15849
Federal Power Commissioner, Respondent.

To The Honorable, The United States Court of Appeals For The Fifth Circuit:

Pursuant to Section 19(b) of the Natural Gas Act Deep South Oil Company of Texas now files this petition

to review and to set aside (1) an order of the Federal Power Commission which denies an application by this petitioner for declaratory relief and which was issued by the Commission on September 9, 1955 in a consolidated proceeding before the Commission entitled "In the Matters of Deep South Oil Company of Texas, Docket G-2952, Humble Oil and Refining Company, Docket G-5261, and Shell Oil Company, Docket G-4671", and (2) a further order of the Commission issued on November 4, 1955, in the same proceeding denying the application of this petitioner for a rehearing.

In support of its petition Deep South Oil Company of Texas alleged as follows:

1. On September 22, 1954 Deep South Oil Company of Texas (hereinafter referred to as Deep South) filed with the Federal Power Commission, pursuant to Rule 1.7(c) of the Rule of Practice and Procedure of the Commission, a petition in which it sought from the Commission an order declaring (1) that certain sales of gas made by Deep South are not subject to regulation under the provision of the Natural Gas Act, (2) that Deep South is not a "natural gas company" within the meaning of the Natural Gas Act, and (3) that Deep South is not subject to the provisions of an order theretofore issued by the Commission bearing the designation "Order No. 174-A."

2. By order of the Commission, hearings on the petition of Deep South were consolidated with hearings on similar petitions filed by Humble Oil and Refining Company and Shell Oil Company, Evidence was taken by a Presiding Examiner in the consolidated proceeding on November 29 through December 2, 1954 and on January

10, 1955. In the consolidated proceeding Deep South presented evidence which established the facts that are set forth in paragraph 3 to 14 inclusive of this petition.

3. Deep South Oil Company of Texas (hereinafter "Deep South") is a corporation organized under the laws of the state of Texas. The principal office of Deep South is in Beaumont, Texas. J. Edward Jones, the president of Deep South, owns all of the stock of the company.

4. Deep South is a small company engaged in the business of discovering and producing oil and gas. The oil and gas producing properties owned by Deep South are all in Texas. The only sales of gas made by Deep South are made from the Big Hill Field, which is located near the Gulf Coast in Jefferson County, Texas.*

5. Deep South operates 18 oil and gas producing wells in the Big Hill Field. Nine "full stream" gas wells produce natural gas and light liquefiable hydrocarbons. Five "casinghead" gas wells produce gas and light liquefiable hydrocarbons in association with curde oil. There are

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* In its original petition to the Federal Power Commission Deep South sought relief only as to the sale made in Jefferson County, Texas. An amended and supplemental petition (filed by Deep South on November 22, 1954) further sought relief with respect to a sale made from a single gas well in Refugio County, Texas. Subsequent to the taking of evidence Deep South withdrew its request for relief with respect to the sale in Refugio County, Texas, the reason for the withdrawal being that the well in question had become exhausted, the equipment dismantled and all deliveries of gas from the well discontinued.

4 straight oil wells which produce no significant quantity of gas.

6. The production installation at each of the gas wells consists of the tubing in the well itself and of certain equipment which permits the gas to expand and which separates the heavier liquids from the gas, water vapor and lighter hydrocarbons. The entire installation is located as close to the wellhead as considerations of safety permit. The gas is delivered on the lease to a purchaser, the delivery being made at the downstream end of the installation through a meter owned by the purchaser. At that point Deep South surrenders all control over the gas.

7. The casinghead and full stream gas sold by Deep South contains water vapor and liquefiable hydrocarbons, and the danger that these will condense renders the gas unfit for transmission by pipeline over any substantial distance.

8. Not only is the gas sold by Deep South unsuitable for long distance transmission but it is also unfit for ordinary use as fuel. In an ordinary document or industrial installation, the liquefiable hydrocarbons in the gas would be likely to condense in the lines leading to the burner and to surge forth causing fire or explosion. To make the gas suitable for ordinary use as a fuel it is necessary to process the gas by removing the liquefiable hydrocarbons.

9. The gas produced by Deep South in the Big Hill Fleld (amounting to about 4,000 MCF per day) is brought and taken by the Texas Gas Corporation (hereinafter referred to as Texas Gas). Texas Gas owns an extensive gathering system and takes delivery of gas from a large

number of leases. The gas taken from Deep South is carried through the gathering system in pipes of increasing size; in those pipes Deep South's gas is commingled with gas from other leases. The commingled stream is carried to a processing plant owned by Texas Gas and located at Winnie, Texas, about seven miles from the Deep South leases.

10. At Winnie the gas from several large lines is commingled and discharged into the procesing plant, where the unprocessed gas is separated into its gaseous and liquid components. The residue natural gas (along with a certain amount of gas chemically produced from certain gasoline cracking operations) is discharged into a common sales header.

11. From this common sales header Texas Gas sells and delivers large amounts of gas to customers who use the gas entirely within the state of Texas. From this header Texas Gas also delivers gas to one company which transports the gas in interstate commerce. By far the greater part of the gas processed in the Winnie plant by Texas Gas and delivered from that plant is consumed within the state of Texas.

12. Of the total amount of gas processed in and delivered from the Winnie plant by Texas Gas, Deep South supplies less than 5 per cent, an amount of gas far smaller than the amount delivered by Texas Gas to customers who use the gas entirely in Texas.

13. In the gathering lines and processing plant of Texas Gas no attempt is made to segregate gas from any particular producer or source and such segregation would in any case be impossible.

14. It is not physically possible to trade any of the gas delivered by Deep South to Texas Gas to an interstate destination. At the time of the delivery of the gas by Deep South to Texas Gas, it is not known and cannot be known whether the ultimate destination of the particular gas delivered will be in Texas or in some other state.

15. On April 5, 1955 the Presiding Examiner handed down a decision denying in all respects the petition of Deep South. Exceptions to this decision were filed by Deep South on May 25, 1955. The Commission heard oral argument on the exceptions on June 13, 1955. On September 9, 1955 the Federal Power Commission issued its order and accompanying opinion No. 284 affirming the decision of the Examiner and denying the declaratory relief sought by Deep South.

16. On October 7, 1955, Deep South applied to the Federal Power Commission for a rehearing by the Commission pursuant to Section 19(a) of the Natural Gas Act. On Nov. 4, 1955, the Commission issued an order denying this application.

17. This petition is filed pursuant to Section 19(b) of the Natural Gas Act, 15 U.S.C.A. § 717r(b). Deep South is aggrieved by the order of the Federal Power Commission review of which is here sought. This order subjects to regulation by the Federal Power Commission the prices charged by Deep South for the gas from its wells in the Big Hill Field of Texas, requires Deep South to apply to the Federal Power Commission for certificate of convenience and necessity covering those sales, and imposes upon Deep South other regulatory burdens which are provided for by the Natural Gas Act.

18. The objections of Deep South to the order and accompanying opinion No. 284 of the Federal Power Commission and to the Commission's further order denying a rehearing are as follows:

(a) The Commission erred in concluding that the sales of gas made by Deep South are sales of gas "in interstate commerce" within the meaning of the Natural Gas Act. This conclusion is erroneous as a matter of law, is not supported by any substantial evidence, and is contrary to substantial evidence in the record.

(b) The Commission erred in finding that there is an uninterrupted flow of natural gas from the leases of Deep South across state lines. This finding is not supported by any substantial evidence, and is contrary to substantial evidence in the record.

(c) The Commission erred in finding that the movement of gas sold by Deep South is uninterruputed by the processing operation which takes place after the gas has been delivered by Deep South to its purchaser. This finding is not supported by any substantial evidence, and is contrary to substantial evidence in the record. The Commission further erred as a matter of law in implying that this processing is not significant in determining the legal character of the sales of gas made by Deep South.

(d) The Commission erred in failing to find that the gas sold and delivered by Deep South is neither suitable for transmission by pipeline over any substantial distance nor fit for ordinary use as commercial or domestic fuel, this finding being required by substantial and uncontradicted evidence in the record.

(e) The Commission erred in finding that Deep South has knowledge that the gas that it sells enters into interstate commerce. This finding is not supported by any substantial evidence and is contrary to substantial evidence in the record.

(f) The Commission erred as a matter of law in concluding that the intention and knowledge of Deep South is not important in determining the legal character of the sales made by Deep South.

(g) The Commission found that certain gas is chemically produced in the processing plant at Winnie and that this gas is thereafter commingled in the stream of gas going to customers of Texas Gas. The Commission erred, however, in failing to find that the volume of gas so produced and commingled was a substantial volume, this finding being required by substantial and uncontradicted evidence in the record.

(h) The Commission erred in concluding that the sales of gas made by Deep South are sales "for resale" within the meaning of the Natural Gas Act. This conclusion is erroneous as a matter of law, is not supported by any substantial evidence, and is contrary to substantial evidence in the record.

(i) The Commission erred in concluding that the gas sold by the said petitioner is "natural gas" within the meaning of the Natural Gas Act. The conclusion is erroneous as a matter of law, is not supported by any substantial evidence, and is contrary to substantial evidence in the record.

(j) The Commission erred as a matter of law in concluding that the sales of gas made by Deep South are not excluded from regulation by reason of Section 1(b) of the Natural Gas Act which provides that the statute shall not apply to "production or gathering".

(k) The Commission erred as a matter of law in concluding that the sales of gas made by Deep South are subject to regulation under the provisions of the Natural Gas Act.

(l) The Commission erred as a matter of law in concluding that Deep South is a "natural gas company" within the meaning of the Natural Gas Act.

(m) The order and opinion of the Commission are erroneous as a matter of law insofar as they purport to require Deep South to comply with the provisions of Order 174-A of the Federal Power Commission or with its successor Order 174-B.

19. The relief prayed by petitioner herein is that the aforesaid order of the Federal Power Commission issued September 9, 1955 denying petitioner's application for declaratory relief and the order dated Nov. 4, 1955, denying the application of petitioner for rehearing be set aside in their entirety. The petitioner further prays that this Court determine and declare that on the basis of the entire record before the Federal Power Commission the sales made by Deep South in the Big Hill Field in Texas ars not subject to regulation under the Natural Gas Act, that Deep South is not subject to regulation under the Natural Gas Act, and that Deep South is

not a "natural gas company" within the meaning of that Act.

Respectfully submitted,
(Signed) ROLAND C. KIZER,

707 Louisiana National Bank Building,
Baton Rouge, Louisiana.

NEWELL W. ELLISON,
HUGH B. COX,
HAROLD M. WILLCOX,

701 Union Trust Building,
Washington 5, D. C.

RICHARD L. FRUCHTERMAN,
Counsel for Deep South Oil Company of Texas.

595 Madison Avenue,
New York, New York.
KIZER, HESTON, CRAIG & CANGELOSI,

707 Louisiana National Bank Building,
Baton Rouge, Louisiana.
COVINGTON & BURLING,

701 Union Trust Building,
Washington 5, D. C.

Of Counsel

November 5, 1955.

ORDER TO FILE PETITION.

Filed November 5, 1955.

In the United States Court of Appeals for the Fifth Circuit.

Deep South Oil Company of Texas, Petitioner,
versus No. 15849
Federal Power Commission, Respondent.

A petition for review of orders of the Federal Power Commission issued on September 9, 1955, and November 4, 1955, in Docket No. G-2952, having been presented to this Court;

It Is Ordered that said petition be filed and docketed as of November 5th 1955;

And it is further ordered that a copy of this Order and said petition be forthwith served upon the Federal Power Commission, and that said Federal Power Commission, upon service of such copies, forthwith certify and file in this Court, a transcript of the record in the proceedings in conformity to Rule 38, as amended, of this Court.

JOHN A. FEEHAN, JR.
Clerk of the United States Court of Appeals for the Fifth Circuit.
By (Signed) CLARA R. JAMES,
Chief Deputy Clerk.

New Orleans, Louisiasa,
November 5, 1955.

* * * * * * * *

ORDER CONSOLIDATING PROCEEDINGS AND FIXING DATE OF HEARING.

United States of America Federal Power Commission.

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Nelson Less Smith, Seaborn L. Digby and Frederick Stueck.

In the Matters of
Deep South Oil Company of Texas Docket No. G-2952
Wesley West Docket No. G-4450
Shell Oil Company Docket No. G-4671

Wesley West, an individual with offices in Houston, Texas, filed a petition on October 18, 1954, for a declaratory order determining status, Mr. West produces gas in the Vienna Field, Lavaca County, Texas, which he sells to Texas Eastern Transmission Corporation (Texas Eastern). The petition alleges that delivery is made at a point of interconnection between Texas Eastern's 24-inch transmission line and a 1,342-foot gathering line operated by Mr. West. The petition avers that the gathering line is an auxiliary of and appurtenant to the lease and well and that it forms a part of the production and gathering facilities owned and operated by Mr. West, and that the gas is sold to Texas Eastern as a part of the process of production or gathering. Mr. West claims that said sale is consummated by him outside of and not within the jurisdiction of the Commission.

Shell Oil Company (Shell), a Delaware corporation with its principal place of business in New York, New York, filed its petition on November 5, 1954, for a declaratory order determining status. Shell produces "casing-

head" gas is the McElroy Field, Crane and Upton Counties, Texas, as a constituent part of the crude oil which it produces, refines and markets. The petition avers that said "casinghead" gas is sold by Shell at the outlet side of its separators to Phillips Petroleum Company (Phillips). The gas is then conveyed along with other such gas through Phillips' gathering lines to its Crane Natural Gasoline Plant, where natural gasoline and other liquid hyrocarbons are manufactured. The petition alleges that the resulting residue gas is sold by Phillip at the outlet side of the plant to El Paso Natural Gas Company for resale for ultimate public consumption.

Shell, on November 5, 1954, also filed a motion to consolidate the above petition for a declaratory order with the petition of Deep South Oil Company of Texas for declaratory order in Docket No. G-2952, filed on September 22, 1954. The proceedings in Docket No. G-2952 have been set for hearing on November 29, 1954, by order of the Commission issued October 28, 1954. The motion to consolidate avers the existence of common questions of law and fact.

The Commission finds:

(1) Common questions of law and fact are involved in Docket Nos G-2952, G-4450, and G-4671.

(2) Good cause exists for fixing a date of hearing less than 15 days after publication of this order in the Federal Register.

The Commission orders:

(A) The proceedings involved in Docket Nos. G-2952, G-4450 and G-4671 are consolidated for purposes of hearing.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 14, 15, and 16 of the Natural Gas Act, and the Commission's Rules of Practice and Procedure, a hearing be held on November 29, 1954, at 10:00 a. m. (EST), in a Hearing Room of the Federal Power Commission, 441 G Street, N. W., Washington, D. C. concerning the matters involved in and the issues presented in the proceedings consolidated in paragraph (A) hereof.

(C) Protests or petitions to intervene in Docket Nos. G-4450 and G-4671 may be filed with the Federal Power Commission, Washington, D. C., in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before the 26th day of November, 1954. The applications are on file with the Commission for public inspection.

(D) Interested State commissions may participate as provided by Sections 1.8 and 1.37(f) [18 CFR 1.8 and 1.37 (f)] of the Commission's Rules of Practice and Procedure.

By the Commission.

LEON M. FUQUAY,
Secretary.

Adopted: November 17, 1954.
Issued: November 18, 1954.

PETITION OF SHELL OIL COMPANY FOR LEAVE TO INTERVENE IN SUPPORT OF PETITION FOR DECLARATORY ORDER BY DEEP SOUTH OIL COMPANY OF TEXAS.

Received Nov 18, 1255 PM '54 Federal Power Commission

United States of America Federal Power Commission.

In the Matter of:
Deep South Oil Company of Texas

Docket No. G-2952.

Shell Oil Company ("Petitioner") petitions under Section 1.8 of the Rules of Practice and Procedure of the Federal Power Commission and pursuant to Order Fixing Date of Hearing issued on October 28, 1954, for leave to intervene in this matter in support of the petition for declaratory order filed herein by Deep South Oil Company of Texas ("Deep South") on the grounds that (1) Petitioner has entered into a sale of gas which it produces from the Nome Field, Jefferson County, Texas, under conditions which result in Petitioner having an interest which may be directly affected by the outcome of this proceeding and (2) Petitioner has an interest of such nature that its participation herein may be in the public interest.

In support of this petition it is respectfully shown:

I.

This proceeding involves the sale by Deep South to Texas Gas Corporation ("Texas Gas"), of gas produced in the North Big Hill Area of Jefferson County, Texas.

The gas is delivered by Deep South at the heads of wells located in said Area and title passes at that point. This gas contains liquefiable hyrocarbons, water and impurities at the time it is so sold and delivered and is not then suitable as a fuel for ordinary domestic or industrial use. Texas Gas transports this gas (commingled with other gas which it purchases from other parties) through its gathering lines located in Jefferson County, Texas, to a processing plant which it owns and operates in said county. At the processing plant liquefiable hydrocarbons are extracted from this commingled mass and the gas is otherwise treated therein. Deep South has no knowledge of the ultimate destination or use of the particular gas which it sells to Texas Gas other than that Deep South is informed and believes that part of the resulting residue gas is sold within the State of Texas to local industrial consumers, and part is sold to two interstate transmission companies, one of which transports the gas in interstate commerce, but Deep South has no information as to whether the other interstate transmission company transports in interstate commerce the gas which it purchases.

II.

Petitioner has entered into a gas sales agreement effective as of April 30, 1954 with Texas Gas Pipe Line Corporation under which Petitioner will sell and deliver gas produced by it from the Nome Field, Jefferson County, Texas. A copy of this contract is attached hereto as Exhibit "A". On October 28, 1954, subject to appropriate reservation of its rights, Petitioner filed with the Commission an Application for Certificate of Public Convenience and Necessity to sell gas under this contract. This application has been assigned No. G-4311 on the Docket of the Commission.

III.

Petitioner is informed and believes that Texas Gas Pipe Line Corporation, the company to which it will sell its gas under the attached contract, is a subsidiary of Texas Gas, the company to which Deep South is selling its gas from the North Big Hill Area; and, by letter dated October 30, 1954 (attached hereto as part of Exhibit "A"), Texas Gas has guaranteed performance of the attached contract by Texas Gas Pipe Line Corporation.

IV.

The gas which Petitioner will sell and deliver under the attached contract consists of gas-well gas (gas produced from gas wells) and casinghead gas (gas produced from oil wells). All of this gas will be delivered by Petitioner to Texas Gas Pipe Line Corporation (or to someone in its behalf) at the outlet of separators located in the immediate vicinity of the wells, and title will pass at that point. Texas Gas Pipe Line Corporation will gather or cause to be gathered, the gas, commingled with gas that it purchases from other parties, through gathering lines to a processing plant where liquefiable hydrocarbons will be removed from the commingled mass. Petitioner is informed and believes that the gas which it will sell to Texas Gas Pipe Line Corporation will be taken to and processed in the same processing plant in which the gas sold by Deep South to Texas Gas will be processed.

V.

Petitioner is further informed and believes that some of the residue gas remaining after the raw gas-well gas and casinghead gas which is sells undergoes processing, will be

sold by Texas Gas Pipe Line Corporation to a purchaser who will transport this residue gas in interstate commerce for resale.

VI.

In view of the similarity between the contract and circumstances under which Deep South is selling its gas and the contract and circumstances under which Petitioner is selling its gas, and because of the questions of fact and law which are common to each of said sales, Petitioner has an interest which may be directly affected by the outcome of this proceeding.

VII.

Petitioner's interest in this proceeding is of such nature that its participation herein may be in the public interest in that there will be an avoidance of multiplicity of hearings and arguments and repetition of evidence and the Commission will be afforded an opportunity of considering at one time the related questions of law and fact which are involved in this proceeding and which are equally applicable to Petitioner's sale of gas in the Nome Field. Granting this petition for leave to intervene will not delay nor interfere with the hearing in this matter as Petitioner will seek no delay of the hearing and will present any brief within the time allowed Deep South.

VIII.

It is in the public interest that the Commission declare whether it is asserting jurisdiction over sales of the type made by Petitioner as well as those made by Deep South, and the unique similarity of the questions of law and fact

applicable alike to these two sales make it desirable that Petitioner be permitted to intervene to present its views, evidence and arguments as to why the Natural Gas Act is not applicable to the type of sale of gas involved in this proceeding.

Petitioner does not contend that the arguments, evidence and reasons which Deep South may present in its behalf in this proceeding will not be adequately presented, but Petitioner feels that it may wish to present certain evidence and reasons in addition to those to be presented by Deep South. The granting of permission to intervene is necessary to insure that all such matters are fully presented in this important hearing.

It has to be recognized that, while admittedly a declaration in this proceeding that Deep South is or is not a natural-gas company as to this one sale of gas will technically bind or inure to Deep South only, nonetheless any order issued herein is bound to establish a precedent which the Commission itself will look to in future cases involving similar sales of gas. Furthermore, untold numbers of independent producers who sell their gas under circumstances similar to this case will feel it also governs their case. Hence, the outcome of this proceeding is of utmost public interest and Petitioner's participation herein may be in the public interest.

IX.

Petitioner, upon information and belief, admits the allegations of fact contained in the petition filed in this matter by Deep South and Petitioner agrees with the position of Deep South that the sale of its gas under circumstances involved in this proceeding does not constitute a sale subject to regulation under the Natural Gas Act because it is

not a sale of natural gas in interstate commerce, it is not a sale of natural gas for resale, and the sale is excluded from federal regulation under Section 1(b) of the Natural Gas Act which provides that the statute does not apply to "the production or gathering of natural gas."

Wherefore, Petitioner, prays that the Commission grant this petition for leave to intervene, and that in due course the Commission declare that neither Deep South nor Petitioner is a natural gas company as a result of their respective sales as outlined herein.

Respectfully submitted,

VINSON, ELKINS, WEEMS & SEARLS,
DAVID T. SEARLS,
Esperson Building,
Houston, Texas.

OLIVER L. STONE
(Oliver L. Stone)
Attorneys for Shell Oil Company.
Legal Department,
Shell Oil Company,
50 West 50th Street,
New York 20, New York.

St ate Of New York,
County Of New York, ss:

Before me, the undersigned authority, on this day appeared Oliver L. Stone, who, being by me first duly sworn, on his oath says:

That he is attorney for Shell Oil Company and is authorized to make this affidavit; that the facts alleged in the foregoing petition are true and correct to the best of his information and belief.

OLIVER L. STONE
(Oliver L. Stone).

Subscribed and sworn to before me this 17th day of November, 1954.

ELIZABETH L. ESPOSITO,
(Seal) Notary Public.

Notary Public, State of New York, No. 24-6204300, Qualified in Kings County, Certificate filed in New York County, Commission Expires March 30, 1956.

Certificate

I hereby certify that I have this day served a copy of the foregoing petition upon Newell W. Ellison, Hugh B. Cox and Burke Marshall, attorneys for Deep South Oil Company of Texas, by mailing a copy properly addressed to them.

This 17th day of November, 1954.

OLIVER L. STONE
(Oliver L. Stone)
Attorney for Shell Oil Company

EXHIBIT "A"

Texas Gas Corporation
Houston, Texas

October 15, 1954.

Shell Oil Company
Shell Building
Houston, Texas

Gentlemen:

Reference is made to the gas sale contract dated October 15, 1954, effective as of April 30, 1954, between Texas Gas Pipe Line Corporation, a buyer, and Shell Oil Company, as seller, covering the sale by such seller to such buyer of gas produced from the Nome Field, Jefferson County, Texas.

In consideration of the sale by Shell Oil Company to Texas Gas Pipe Line Corporation of gas from such field pursuant to such contract, Texas Gas Pipe Line Corporation, a Texas corporation, hereby agrees with Shell Oil Company that Texas Gas Corporation guarantees performance by Texas Gas Pipe Line Corporation of such contract and of the obligations of Texas Gas Pipe Line Corporation under such contract, and Texas Gas Corporation hereby indemnifies and agrees to hold Shell Oil Company harmless from and against all loss, cost, damage, or expense suffered or incurred by Shell Oil Company by reason of the failure of Texas Gas Pipe Line Corporation to comply with its obligations under said gas sale contract of October 15, 1954.

This letter is being executed simultaneously with execution of said contract of October 15, 1954, and it is understood and agreed that said contract of October 15, 1954, together with this letter, supersede and replace all prior agreements, understandings, and negotiations between Texas Gas Pipe Line Corporation and Shell Oil Company and between Texas Gas Corporation and Shell Oil Company relative to the sale and purchase of gas and casinghead gas from the Nome Field, Jefferson County, Texas.

Yours very truly,

TEXAS GAS CORPORATION,
By V. W. RIGGINS,
Vice President.

Accepted And Agreed To:
Date: 10-15-54

SHELL OIL COMPANY,
By Illegible.

Date: 10-15-54

TEXAS GAS PIPE LINE CORPORATION,
By Illegible.
Vice President

This Agreement made and entered into, effective as of April 30, 1954, by and between Shell Oil Company, a Delaware corporation, with a permit to do business in the State of Texas, hereinafter called "Seller", and Texas Gas Pipe Line Corporation, a Delaware corporation, with

a permit to do business in the State of Texas, hereinafter called "Buyer",

Witnesseth:

Whereas, Seller is the owner of various properties producing gas and casinghead gas in and under certain lands in Jefferson County, Texas, situated within what is known as the Nome Field. Buyer proposes to receive or cause to be received by a gatherer for the account of Buyer and to purchase Seller's gas at the delivery points in the field and under the terms and conditions herein provided.

1.

Scope of Agreement

1.01 Subject to the terms and provisions of this contract, Seller commits to the performance hereof and this contract shall cover all of Seller's interest in gas in the non-associated gas reservoirs and in the associated gas or gas caps and the casinghead gas to be produced from the oil reservoirs situated in the Nome Field and underlying the above described properties, more fully described in an exhibit attached hereto and made a part hereof, and this contract is specifically limited and restricted to the gas to be produced during the term hereof from the reservoirs and within the limits and boundaries described in said exhibit.

2.

Construction and Amortization of Line

2.01 To enable Buyer to purchase Seller's gas at the points of delivery hereinafter specified, Buyer shall con-

struct or cause to be constructed the necessary segment of gathering line from such delivery points in the Nome Field, Jefferson County, Texas, southward to a junction with an existing gathering line known as the North Winnie Line, Chambers County, Texas. A portion of the actual cost to Buyer of constructing said aforementioned segment of gathering line shall be amortized on the following basis:

(a) Seller shall pay Buyer 1c per MCF of gas delivered by Seller to Buyer under this contract until 80% of the actual cost of such segment has been amortized.

(b) Buyer shall bill Seller each month during the term of this agreement for the amount so due, calculated as aforesaid and based on the quantities of gas delivered and purchased during the preceding month through such line. Seller agrees to pay Buyer within fifteen days after rceipt of payment from the Buyer for the gas so delivered during such preceding month.

(c) In connection with the provisions of this article 2, Buyer shall furnish Seller with full and complete details with respect to the estimated cost of surveying and obtaining right of way, construction costs, etc., including detailed proposed construction contracts and said work shall not be commenced until the parties have mutually agreed with respect to such costs. Within 90 days after completion of such line Buyer shall furnish Seller with a statement reflecting the total actual cost thereof. Seller, at its option, shall have the right to examine and audit the records of Buyer pertaining to the construction of such segment to verify the accuracy and correctness of such cost statement, it being agreed and understood that such costs shall be limited to Buyer's actual direct cost in

constructing such segment with no allowance for overhead, interest on capital or other indirect items of cost.

(d) Buyer shall maintain records of the costs of such segment of line in such manner as to permit determination of the cost of each portion of such segment which may be used by Buyer in transporting or causing to be transported gas other than that produced by Seller and sold to Buyer. In the event gas other than that produced by Seller and sold to Buyer, is at any time or times transported through such segment of line or any portion thereof, prior to Buyer recouping its actual cost as above provided, Buyer agrees to reduce the actual cost of such particular segment or portion to which it would otherwise be entitled to recoup from Seller, by an amount equivalent to 1c per MCF for all other gas transported through such segment or portion, to the end that Buyer's recoupment from Seller shall not only be accelerated but thereby reduced.

3.

Term

3.01 This contract shall be for a term commencing upon the first day of the calendar month following the month in which deliveries of gas are commenced hereunder and shall continue for seventy-three hundred (7300) days thereafter unless sooner terminated as herein provided.

3.02 Buyer has applied to the Federal Power Commission for a Certificate of Public Convenience and Necessity in order to establish a market for the gas committed hereto and to perform its obligations to Seller under this contract. Buyer agrees to use due diligence in the futher-

ance of such application. Seller agrees that it shall promptly apply for and thereafter use due diligence in an effort to secure from said Commission a disclaimer of jurisdiction by the Commission over the sale of gas hereunder, or in the alternative for the issuance of a Certificate of Public Convenience and Necessity acceptable to Seller in its sole discretion authorizing the sale by Seller provided for in this agreement and in accordance with its terms.

3.03 If Buyer shall fail to receive and accept a Certificate of Public Convenience and Necessity by January 1, 1955, then either party hereto shall have the option at any time thereafter and before such certificate is in fact received and accepted to terminate this agreement in its entirety by giving written notice to the other party. If Seller shall fail to secure a disclaimer of jurisdiction by the Federal Power Commission, or in the alternative shall fail to receive and accept a Certificate of Public Convenience and Necessity by January 1, 1955, then either party hereto shall have the option at any time thereafter and before such disclaimer of jurisdiction, or in the alternative receipt and acceptance of certificate by Seller, to terminate this agreement in its entirety by giving written notice to the other party. Neither Buyer nor Seller shall be obligated to construct or install, or cause to be constructed or installed, any facilities for the delivery, gathering or receipt of gas prior to the time that both parties shall have received and accepted Certificates of Public Convenience and Necessity, or, in the case of Seller only, a disclaimer by the Federal Power Commission of jurisdiction over this sale shall have been obtained.

3.04 Upon receipt and acceptance by both parties of Certificates of Public Convenience and Necessity, or in the case of the Seller a disclaimer of jurisdiction by the

Federal Power Commission as referred to in Section 3.03 above, Buyer agrees to proceed with due diligence to construct or cause to be constructed the gathering lines and other facilities provided for herein to enable Buyer to purchase Seller's gas at the points of delivery hereinafter specified, and Seller agrees so to proceed to construct the facilities necessary to enable Seller to deliver gas at such points in accordance with this agreement. Buyer's obligation to commence payment for the daily contract minimum quanity hereunder, in the event Buyer is not then actually taking same, shall commence upon the first day of the calendar month after the expiration of four (4) months following the date upon which the last of such certificates (or disclaimer of jurisdiction in the case of Seller) has been received and accepted, and provided Seller has completed its facilities necessary to enable it to deliver the quantities of gas herein specified at the points of delivery and Seller is then willing and able to deliver such quantities.

3.05 If Buyer has not completed or caused to be completed the gathering lines and other facilities provided for herein to enable Buyer to purchase Seller's gas at the points of delivery hereinafter specified within a period of five months following the date upon which the last of such certificates, or in the case of Seller, disclaimer of jurisdiction, has been received and accepted, and provided Seller has completed the facilities necessary to enable Seller to deliver the quantities herein specified at the points of delivery, and Seller is willing and able to deliver such quantities, then at any time thereafter prior to commencement of actual take of such minimum daily contract quantity by Buyer, Seller shall have the right to take over the construction of the facilities of Buyer for Buyer's account. at the expiration of ten (10) days follow-

ing the date of delivery of written notice to such effect. If Seller so elects to take over and complete the construction of Buyer's facilities, it shall proceed with due diligence to complete same at Buyer's cost and subject to Article 2 hereof without liability to Seller, and so long as Seller shall so proceed with due diligence, Buyer's obligation to pay for gas not taken shall continue hereunder.

4.

Definitions.

4.01 The term "year" shall mean an annual period commencing with November 1st of each year of the term provided herein, except if the term hereof commences on some date other than November 1st, the first year hereunder shall be the remaining portion of such year up to November 1st and the last year shall consist of the number of days remaining in the term hereof after November 1, 1974.

4.02 The term "month" shall mean a calendar month.

4.03 The term "day" shall mean a day beginning at 7 o'clock A.M. on each calendar day and ending at 7 o'clock A.M. on the following calendar day.

4.04 The term "gas" as used herein means a mixture of hydrocarbon gases produced (a) from natural gas wells, excluding condensate and other liquids recovered therefrom by Seller in conformity to other provisions of this contract, and (b) from oil wells, and from the same formation or formations from which crude oil is produced, commonly called "casinghead gas", but including without distinction returned gas used in the artifical lifting of crude oil produced from such wells.

5.

5.01 Subject to the other provisions hereof, Buyer agrees to purchase and receive, if available, and Seller agrees to sell and deliver during the term of this contract a quantity of gas as hereinafter set forth:

5.02 The term "daily contract quantity" shall mean a quantity of gas equal to the recoverable gas reserves committed hereto, divided by 7300 days. The daily contract minimum averaged over a yearly period shall be 73% of the daily contract quantity, and the daily contract maximum averaged over a yearly peri· shall be 110% of the daily contract quantity. Subje· ticle 6 rereof, Buyer will take the said daily contract ·nimum quantity averaged over each annual period. The daily contract minimum quantity averaged over each monthly period to be taken, shall not be less than all of the legally produced casinghead gas available for delivery to Buyer plus 500 MCF per day per gas well, provided however, that such minimum shall not exceed 73% of the daily contract quantity. The daily contract maximum quantity averaged over any monthly period shall not exceed 125% of the daily contract quantity. It is expressly understood and agreed, however, that for the first eighteen hundred twenty-five (1825) days of the term hereof, Buyer shall not be required to take or pay for in excess of all of the legally produced casinghead gas available for delivery to Buyer plus 500 MCF per day per gas well or 73% of the daily contract quantity, whichever is the lesser.

5.03 Buyer agrees to take gas ratably on a reserve basis from the wells of Seller as it takes gas from the wells of any other producer of gas in the same field or reservoirs, if available. Notwithstanding the other provisions hereof,

Buyer agrees, upon written notice from Seller and submission of reasonable proof of the existence of drainage, to take additional quantities of gas to the end that the properties of Seller shall be protected from any such drainage.

5.04 Buyer and Seller shall as promptly as possible, conduct a joint study of Seller's reserves, including the reserves of casinghead gas, in the reservoirs made subject hereto, for the purpose of arriving at the original daily contract quantity as hereinabove defined. In making this joint study, as well as any future studies, or arbitrations of reserves, the volume of gas originally in place in the committed reservoirs containing non-associated gas together with the gas originally in place in any gas caps which may be committed to this contract shall be determined. In each instance this quanity shall then be multiplied by 80% to arrive at an estimate of the originally recoverable gas in such reservoirs. Production from such reservoirs to the date of each such study shall then be deducted. To this quantity shall be added the estimated future production of casinghead gas by Seller from oil reservoirs which are included in the description of reservoirs made subject to this contract. The sum of the reserves as determined above shall constitute the recoverable reserves under Seller's leases as of the original determination of reserves and as of each redetermination thereafter. The original "daily contract quantity" shall, as provided above, be a quantity of gas equal to the recoverable gas reserves determined as above provided, divided by 7300 days. After each redetermination of Seller's reserves, the daily contract quantity to be effective thereafter shall be the recoverable reserves committed hereto arrived at by joint study and agreement or arbitration as hereinafter provided, divided by the number of days remaining in the

term of the contract, and thereafter the daily contract minimum quantity and the daily contract maximum quantity and the monthly flow tolerances shall be adjusted accordingly.

5.05 Upon demand of either party, a joint study in the manner hereinbefore provided will be conducted as to said field, but not more often than once every two years during the term of this contract, unless new information obtained by reason of drilling wells, observation of well performance, or otherwise, reasonably indicates a change of conditions in which event the joint studies or arbitrations will be made at the demand of either party at shorter intervals.

5.06 If, at any time, for a period of six consecutive calendar months, Seller's delivery capacity shall be less than 125% of the daily contract quantity then in effect, then at the option of Buyer, to be exercised by written notice to Seller, the daily contract quantity then in effect may be reduced in proportion to the reduction of Seller's delivery capacity below a quantity equal to 125% of the then effective daily contract quantity. In the event Buyer gives Seller such notice of Buyer's intention to reduce, then Seller shall have the option for six months thereafter of taking such steps as it may elect to make deliverable the full amount of the gas which Buyer was theretofore entitled to receive, including subjecting to this contract additional reserves of gas reasonably accessible to Buyer's pipe line. In the event Seller does not, in said six months period, make available for delivery such required quantities of gas, then at Buyer's option, to be exercised by notice in writing to Seller, the daily contract quantity then in effect shall be reduced in proportion to the re-

duction in Seller's delivery capacity below a quantity equal to 125% of the then applicable daily quantity.

6.

Make Up Gas

6.01 If, during any annual contract period, Buyer fails to take the minimum quantity of gas which it is required to take during such period, Buyer shall have the right during the next such annual period to make up the deficiencies in volumes of gas not so taken, accounting to Seller on the basis of the tax reimbursement and price in effect at the time of such make up, but in no event shall Seller be required to deliver to Buyer in any one day a quantity in excess of 125% of the daily contract quantity provided for herein. If Buyer fails to make up such deficiencies within said ensuing annual period, Buyer shall, at the expiration of such make up period, pay Seller for such deficiencies on the basis of the price prevailing during the period of such deficiencies. Provided, however, the provisions of this Article shall not apply with respect to quantities of casinghead gas paid for but not taken, as set forth in paragraph 3.04 hereof.

7.

Quality of Gas

7.01 Seller agrees that the gas delivered hereunder shall at all times comply with the requirements as to quality expressed in this agreement. Buyer agrees that Seller may extract, or permit the extraction of, natural gasoline, butane, propane and other hydrocarbons from said gas or process the gas in any other manner, except

that only such methane may be extracted as is necessary to extract the other products, and that Seller may subject, or permit the subjection of, the gas to compression, cooling, cleaning and other processes. At Seller's option, it may enrich the gas delivered hereunder by addition of quantities of butane, propane, and other hydrocarbons of the same type as those permitted to be extracted from such gas. Seller shall not otherwise adulterate the gas and shall not subject the gas to any process or operation other than of a type expressly permitted in this contract, nor shall any such process or operation reduce the heating value of said gas below 1,000 B.T.U. per cubic foot unless prior to delivery of said gas Seller enriches same to meet said minimum as above provided.

7.02 The gas to be delivered hereunder shall have a gross heating value at the point of delivery of not less than 1,000 British Thermal Units per cubic foot. In the event that the total heating value of the gas in any month falls below one thousand British Thermal Units per cubic foot, and in the event Buyer has elected to take such deficient gas, a reduction shall be made in the total amount which Buyer would otherwise pay for such month if the total heating value were one thousand British Thermal Units or above. The reduction shall be calculated by multiplying said amount so otherwise payable by a fraction, the numerator of which is the deficiency in total heating value per cubic foot below one thousand British Thermal Units, and the denominator of which is one thousand.

7.03 The gas to be delivered hereunder shall not contain more than one grain of hydrogen sulphide per one hundred cubic feet as determined by a quantitative test after presence of hydrogen sulphide has been indicated by qualitative test, which shall consist of exposing a strip of white filter paper recently moistened with a solution of

one hunderd grains of lead acetate in one hundred (100) cubic centimeters of water, to be exposed to the gas for one and one-half minutes in an apparatus previously purged, through which the gas is flowing at a rate of approximately five cubic feet per hour, the gas not impinging from the jet upon the test paper, and which qualitative test shall be deemed to be satisfied if, after this exposure, the test paper is found not distinctly darker than a second paper freshly moistened with a solution not exposed to the gas. The gas to be delivered hereunder shall not contain more than twenty grains of total sulphur per one hundred cubic feet.

7.04 The gas to be delivered hereunder shall be commercially free of crude oil, free water, solids, dust, and other objectionable substances which would render said gas unsuitable to Buyer's customers and shall not have a temperature in excess of 140° Fahrenheit at the point of delivery. Except in case of full stream deliveries as herein provided, such gas shall likewise be commercially free of condensate. Seller shall install and operate such conventional field separation facilities as are normally required to make delivery under such specifications at its sole cost and expense, except in case of full stream deliveries. Seller shall not be required to install or operate dehydration facilities.

7.05 In the event Seller shall tender to Buyer gas which does not meet the above specifications, Buyer shall give notice to Seller, who will promptly undertake to correct such condition by reasonably appropriate measures. While such condition continues, Buyer shall have the option:

(a) To accept and pay for such gas subject to reduction in payment as provided in 7.02 above; or

(b) To reject such gas and require Seller to exclude from delivery hereunder, until such time as the condition may be remedied, the gas from any well or wells which causes the gas tendered to fall below such specifications.

7.06 If after making a reasonable effort to correct such condition Seller is unable to remedy the cause thereof and by reason of the failure of a particular well or wells to produce gas meeting the specifications hereof, Buyer rejects and does not take gas from such well or wells for a period of thirty (30) days, then at any time thereafter, while such condition continues and Buyer continues to reject such gas, upon the demand of either party by written notice to the other, the reserves of gas applicable to such well or wells shall thereafter be excluded from the calculations of reserves, and Seller shall have the right to sell such gas so excluded as it may see fit. In the event that failure of the gas tendered to meet specifications is not due to processing or adulteration by Seller, the rights of Buyer set forth in this paragraph shall be its exclusive remedy.

8.

Price

8.01 Buyer agrees to pay Seller for each one thousand cubic feet of gas sold and delivered to Buyer during each calendar month, or for which payment is due hereunder, as follows:

First five year period.

(a) During the period commencing with the date of first deliveries hereunder or the date provided in paragraph 3.04 hereof whichever occurs first, 13c.

(b) During the one year period commencing November 1, 1955, 13.2c.

(c) During the one year period commencing November 1, 1956, 13.4c.

(d) During the one year period commencing November 1, 1957, 13.6c.

(e) During the one year period commencing November 1, 1958, 13.8c.

During The Second Five Year Period—14c.

During The Third Five Year Period—15c.

During The Remaining Term Of This Contract—16c.

9.

Price Redetermination

9.01 The above prices shall be redetermined for each of the last three five year periods of this contract, but in no event shall such redetermined price be less than the price scheduled for such five year period in the preceding paragraph. The parties hereto shall, six months prior to the commencement of any such price period, begin negotiations to determine whether they can agree on the price applicable to gas delivered during such period; and if, during the succeeding sixty days, they are unable to reach an agreement regarding such redetermined price, such issue shall immediately be submitted to arbitration as herein provided, and the arbitrators shall conclude their proceedings and determine a price within sixty

days after submission of the issue to them. In order to establish a redetermined price, the parties or the arbitrators shall determine the three highest prices that are being paid at the beginning of the respective price period by three different transporters for gas produced in Railroad Commission District No. 3 (as presently constituted) for transportation or resale in interstate commerce, under three different contracts with producers under which deliveries of gas are then being made, and the redetermined price shall be the average of such three highest prices but not less than the price shown above for such period. In selecting the three highest prices to be used in such redetermination such prices shall be for quantities up to a daily average quantity of gas equal to 200% of the daily contract quantity in effect at the beginning of such price period for the volumes of gas herein provided for and adjustment shall be made for differences in dehydration, payment for or cost to Buyer for gathering and compression, and any other matter having a direct bearing on price.

10.

Tax Adjustment.

10.01 Seller shall pay all state and federal taxes imposed and at the rates in effect on the effective date of this agreement upon the production and severance of gas and all similar taxes in respect of and applicable to gas delivered hereunder. In the event of any increase in the cost to Seller, occurring after the effective date of this agreement, in respect of or applicable to the gas delivered hereunder and at the prices herein provided occasioned by (a) any increase in the rate of such taxes imposed and in effect on the effective date of this agreement or other

taxes hereunder, and/or (b) by the imposition of any new taxes, such as sales, occupation, gathering, export or excise taxes, including any occupation or other tax based upon or measured by the gathering of gas, and/or (c) a substitution of any such taxes, or (d) taxes having a similar effect, which taxes and/or rates are greater than the applicable taxes imposed or at rates in effect on the effective date of this agreement in respect of and applicable to the gas delivered hereunder and at the prices herein provided, then Buyer will pay or reimburse Seller for the net amount thereof paid by Seller, by increasing the price of gas sold subject to such increased tax to the extent of three-fourths of the amount of itre increase in cost to Seller occasioned thereby. There shall not be included in such additional or increased taxes with which Buyer may be charged, any income tax, general ad valorem property taxes, or other taxes of like nature as may hereafter be imposed. In case any adjustment in taxes is in order, Seller shall, if possible and practical, include the same in current statements and billings, or in all other cases shall, within ninety days after the end of each year, prepare and submit to Buyer a statement thereof, in either case such statement shall set forth the amount of such increase in cost to Seller caused by new or additional taxes that it has paid during the preceding year as the case may be. Upon payment of current billings, or within thirty days after submission of such statement at the end of the year, Buyer shall reimburse Seller to the extent of three-fourths of such increase in cost due to new or additional taxes as herein defined which Seller shall have so paid. Buyer shall pay all taxes imposed upon the gas after receipt thereof by Buyer at the point of delivery.

11.

Favored Nations.

11.01 In the event at any time during the term of this contract Buyer purchases gas from any gas producer other than the Seller herein in the Nome Field at a price, or under any other terms and provisions affecting or in any manner having a bearing on price, more favorable to such other gas producer than provided in this contract, Buyer shall thereupon and during the period of such more favorable price, increase the price provided for by the difference between such more favorable price and the price provided for. In making this determination and comparison of prices, adjustment shall be made to compensate for differences in tax allowance, methods of computation of quantities, payment for gathering, compression or dehydration, or any other matter having a direct bearing on price.

12.

Reservations of Seller.

12.01 Seller's obligation to sell and deliver gas hereunder shall be subject to the rights to use of gas, if any, reserved by Seller's lessors under the respective oil, gas and mineral leases.

12.02 There are further reserved sufficient quantities of gas at all times for use in connection with properties which Seller owns or in which it has an interest in development and operations of every kind conducted in the field and the vicinity thereof. Without limitation by enumeration, such uses shall include drilling and deepen-

ing of wells, gas lifting of oil, pressure maintenance and repressuring of formations, fuel for operations of Seller and its subsidiary or affliated companies, pipelines, compressors, dehydrators, gasoline or extraction plants, water stations, salt water disposal systems, and camps.

12.03 If, as a result of Seller's use of a quantity of such gas in its operations for pressure maintenance and repressuring of formations, Buyer does not receive during the twenty (20) years primary term hereof in the aggregate as much gas as Buyer would otherwise have been entitled to receive during such primary term under the other provisions of this agreement, Buyer shall have the right to purchase and receive from Seller under this agreement, commencing immediately after the expiration of such primary term, a volume of gas equal to the difference between (i) such total volume Buyer would have been entitled to receive under the provisions of this agreement had no gas been used for such pressure maintenance and re-pressuring of formations, and (ii) the total volume of gas actually received by Buyer. In making the calculations provided in the preceding sentence, there shall be included in item (ii) the full volume of gas actually received by Buyer during the primary term at the points of delivery herein provided, whether delivered in accordance with all of the provisions hereof or not, and there shall not be included in item (i) any quantity or quantities of gas available hereunder which Buyer may have failed to receive for reasons other than Seller's use of same in pressure maintenance and re-pressuring of formations. The gas to be furnished to make up deficiencies, if any, resulting from such pressure maintenance and re-pressuring of formations shall be delivered by Seller from the reservoirs committed hereto and any additional reservoirs into which the gas has been injected for any pressure main-

tenance or re-pressuring operations and shall be purchased by Buyer under all of the price, quantity and other provisions of this agreement in effect at the time of delivery and receipt of such deficiency gas, or, in the case of price, at such higher price as may be fixed or determined at the time by any State or Federal authority, if any, having jurisdiction, and this agreement shall continue in force for such additional period of time as shall be necessary to enable Buyer to obtain delivery of such accumulated deficiency of gas volume by its taking daily quantities of gas in accordance with the quantity provision of this agreement then in effect.

12.04 Subject to the provisions of Article 23 hereof, in the event Seller desires to process the gas or cause it to be processed for the recovery of natural gasoline or other liquid hydrocarbons before delivering the gas to Buyer, the right to do so is specifically reserved by Seller as provided in paragraph 7.01 hereof, and the residue gas remaining after such processing shall be delivered by Seller to Buyer at a mutually agreeable central point in the field, in lieu of gas direct from the wells, provided, however, that the composition thereof will not be changed so that such residue gas will not meet the specifications of this agreement as to pressure, heating value, sulphur content and otherwise.

12.05 Seller reserves the right to operate its leases free from any and all control by Buyer in such manner as Seller in its sole discretion deems advisable, including without limitation the right to drill any new wells, to repair, rework or recomplete old wells, to renew, extend, surrender, release or terminate in whole or in part any lease in said field and to abandon any well not deemed by Seller capable under normal methods of operation of producing oil, gas or casinghead gas in quantities profitable

to Seller. Subject to paragraph 14.02 Seller may remove from this contract any well not producing gas at pressures sufficient to meet the pressure requirements of this contract, even though producing oil in quantities profitable to Seller, unless Buyer exercises its privilege of installing compressors for the purpose of receiving such gas. Nothing in this agreement shall be construed as requiring Seller to carry on drilling, reworking, reconditioning or other operations in the field against its will, or to produce any well or wells at a rate which Seller considers harmful to the well or reservoir or at a rate in excess of that permitted by applicable laws, orders, rules and regulations of governmental agencies having jurisdiction in the premises.

12.06 The provisions of this agreement shall not in any case limit or restrict Seller from entering into pooling agreements, unitization agreements and operating agreements affecting the area covered hereby, but shall in such event extend and apply to the production of gas from any such unit allocable to each party joining as a Seller herein to the extent that such interest is derived from the Seller's existing leases subject to this agreement.

12.07 Although Seller in good faith believes that it owns title to the gas and gas rights affected hereby, it makes no warranty of title thereto except as to gas delivered as contained in Article 17 hereof. In the event of failure of Seller's title to the gas rights in any tract or interest therein, then this contract shall no longer apply thereto, and the obligations of the parties shall be reduced to such extent except as to gas theretofore delivered. Pending settlement of litigation involving Seller's right to deliver gas hereunder from any tract, Seller may, at its election, make no deliveries from such tract.

13.

Delivery Points.

13.01 The quantities of gas herein provided for shall be delivered by Seller to Buyer at the following designated points:

(a) with respect to casinghead gas, at a central point in field, to be as mutually agreed upon; provided, however, at Seller's option, exercised by written notice to Buyer, the point of delivery for casinghead gas may be changed to the outlet of Seller's facilities for the separation of oil from casinghead gas for each of Seller's oil wells covered by this contract.

(b) with respect to gas well gas, at each of such gas wells or points adjacent thereto, to be mutually agreed upon.

14.

Delivery Pressure.

14.01 Such gas shall be delivered by Seller at each point of delivery at a pressure sufficient to enter Buyer's line not to exceed 1,000 psig, provided, however, so long as Sun Oil Company is making deliveries to a gatherer of Buyer of a quantity of North Winnie Gas under the terms of presently existing agreements, the gas delivered hereunder shall be delivered at pressure sufficient to enter Buyer's line not to exceed 400 psig. During this particular period, Seller shall pay such gatherer 1c per MCF for compressing all gas delivered hereunder.

14.02 Seller shall not be obligated to install compressors to make deliveries of gas from gas wells. Seller shall be obligated, however, to install and operate compressors necessary for the delivery of any casinghead gas which is considered in arriving at any estimate of reserves made subject to this contract in the determination of the daily contract quantity hereunder, for such period of time as the installation and operation of such compressors is economically feasible, in the judgement of Seller, exercised in good faith. Buyer shall, however, have the right at its option to install and operate compressors at its cost and expense for the purpose of compressing any gas previously made subject to delivery hereunder, and in like manner Seller shall have the right at its option, but shall not be required, to install compressors for delivering gas well gas previously made subject hereto at its cost and expense. Subject to Seller's obligation to compress casinghead gas as hereinabove provided, in the event at any time Seller shall elect not to install any compressors or continue to operate same and Buyer likewise shall elect not to install and operate compressors, such gas as may thereupon become undeliverable because of lack of sufficient pressure may be sold by Seller to third parties free of this contract and the reserves from which such gas is furnished shall thereafter be released from the operation hereof.

15.

Metering Facilities, Measurements and Tests.

15.01 Buyer agrees to install, operate and maintain the metering facilities necessary to measure the volumes of gas delivered at the respective delivery points as herein provided.

15.02 In the event Seller exercises its option as set forth in paragraph 13.01 (a) hereof, by reason of the fact that quantities of casinghead gas can not be accurately measured in small fluctuating volumes, which will be the case if such delivery points are so revised, it is understood and agreed that for the sole purpose of determining quantities of such casinghead gas so delivered and to be paid for, same shall be measured by metering facilities at a central point in the field, located downstream of the point where the respective streams of casinghead gas are commingled, the quantity of such gas so measured at such point to be allocated back to the respective delivery points on the basis of the measured volumes at such respective delivery points.

15.03 The unit of the gas deliverable under this agreement shall be one thousand cubic feet (referred to herein as MCF). One cubic foot of gas shall be the amount of gas contained in one cubic foot of space under an absolute pressure of 14.65 pounds per square inch and at a temperature of sixty degrees Fahrenheit.

15.04 The volume of gas delivered by Seller hereunder shall be measured at the orifice meter or meters of Buyer at the point of delivery which, together with any buildings and all other collateral equipment required for the determination of volume, shall be installed and maintained by Buyer at its cost and expense. Seller grants Buyer the right of ingress and egress to its properties in the field for the purposes of this contract, insofar as its leases and other contracts permit. Orifice meter or meters shall be installed and operated in accordance with the specifications prescribed in Gas Measurement Report No. 2 dated May 6, 1935, of the Natural Gas Department of the American Gas Association and any subsequent amendments thereto.

if such amendments are mutually acceptable to the parties hereto, or by any other method agreed upon between the parties hereto; and it is hereby agreed that the values of the Reynolds number factor and the expenson factor shall be assumed to be one (1).

15.05 The atmospheric pressure for the measurement of all gas hereunder shall be assumed to be 14.7 pounds per square inch absolute, or such other figure as may be established by applicable order, rules, regulation or finding of the Railroad Commission of Texas.

15.06 The temperature of the gas flowing through the meters shall be determined by the continuous use of a recording thermometer at point of delivery, installed at Buyer's expense, so that it may properly record the temperature of the gas flowing through the meters. The arithmetical average of the hourly temperature recordings during the time gas was actually passing shall be used to make proper correction in volume computations for such point of delivery.

15.07 The specific gravity of the gas flowing through the meters shall be determined by a spot test to be made at the delivery point at approximately the end of each month by the balance method and using instruments satisfactory to both parties for such purpose. The specific gravity reading so determined shall apply on all quantities of gas sold and delivered during the succeeding monthly period. Buyer shall supply and operate at its own expense the necessary equipment for the making of such spot checks or tests. The specific gravity of full stream deliveries shall be as determined in paragraph 23.03 hereof.

15.08 The deviation of the gas from the Ideal Gas Laws at the pressures and temperatures under which said gas is delivered by Seller to Buyer shall be determined by methods in accordance with bulletins of the California Natural Gasoline Association setting forth tentative standard methods for calculation of high pressure gas measurement, or by such other methods as may be mutually agreed upon, and approved by the Railroad Commission of the State of Texas. Upon demand of either party, such actual deviation may be determined by joint tests at intervals of six months, or as much more often as is found necessary in practice, or in order to comply with applicable laws and resulations. Each such calculation shall determine the corrections to be used in computations for the measurement of natural gas deliveries hereunder until the next test.

15.09 Seller may install, maintain and operate check meters and collateral equipment which shall be so installed as not to interfere with the operation of facilities through which Buyer receives gas, at or near the point of delivery. Buyer shall have access to such check measuring equipment at all times during business hours, but the reading, calibrating and adjustment thereof, and the changing of charts, shall be done only by the employees or agents of Seller.

15.10 In the event a meter or other measuring instrument is out of service or registering inaccurately, the volume of gas delivered hereunder shall be estimated (a) by using the registration of any check meter or meters or other instrument if installed and accurately registering, or in their absence, (b) by correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation, and the resulting error in

measurement of volume is in excess of the permissive margin of error hereinafter provided, or, if neither such method is feasible, (c) by estimating the quantity from deliveries during a period under similar conditions when the meter or other instrument in question was registering accurately, or by any other method agreed upon.

15.11 From time to time and at once a month, on a date as near the first of the month as practicable, the accuracy of Buyer's meters shall be verified in the presence of representatives of both Seller and Buyer and the parties shall jointly observe any adjustments which are made in such meters. If either party at any time shall notify the other that it desires a special test of any meter, the other party shall cooperate to secure immediate verification of the accuracy of the meter and joint observation of any adjustments. Each party shall give to the other notice of the time of all tests of meters reasonably in advance of holding of tests in order that the other party may conveniently have its representative present. Verification of the accuracy of other instruments affecting the measurement of volume shall be made by similar joint observation and adjustment from time to time upon request of either party.

15.12 If, upon any test of measuring equipment, the readings of such instrument or instruments are found to be no more than two per cent (2%) in error, previous readings of such instrument shall be considered correct in computing quantities of gas delivered hereunder, but such meter or other instrument shall be adjusted at once to read accurately. If upon any test any meter or other instrument affecting measurement is found to be inaccurate by an amount exceeding two per cent (2%) at a reading corresponding to the average conditions of flow

for the period since the last preceding test, such meter or instrument shall be adjusted at once to read accurately. Unless such inaccuracy, when taken in combination with any ascertained inaccuracy of other instruments affecting resulted in an error in measurement of volume in excess of two per cent (2%), no correction of previous readings of such instrument shall be required. If such accumulated inaccuracy of the several instruments during such period shall have resulted in an error exceeding two percent (2%) of the total measured volume, then all previous readings of such instruments found to have been measuring inaccurately shall be corrected to zero error for such period as is known definitely or agreed upon, whether or not the individual errors of each instrument would otherwise have required correction of the previous readings thereof. In case the period of error is not known definitely or agreed upon, correction shall be for a period extending over one-half (½) of the time elapsed since the date of the last test of meters, not exceeding a correction period of sixteen (16) days.

15.13 The heating value of each cubic foot of the gas delivered hereunder shall be assumed to be at least one thousand (1,000) British Thermal Units per cubic foot, unless, at the option of Buyer, it is desired to more accurately determine such heating value by the use of spot tests in the following manner. The total heating value of the gas may in such event be determined by taking samples of the gas at the delivery point at such times as may be requested by either party, but not more often than once each month, and having the British Thermal Unit content thereof per cubic foot determined by an accepted type of calorimeter, for a cubic foot of gas at temperature of sixty degrees (60°) Fahrenheit when saturated with water vapor and at an absolute pressure equivalent to

thirty (30) inches of mercury at thirty-two degrees (32°) Fahrenheit. The British Thermal Unit content per cubic foot so determined shall apply on all quantities of gas sold and delivered during the succeeding monthly period and until the next determination. Buyer shall supply and operate at its own expense the necessary equipment for making such spot checks or tests.

15.14 Either party shall have the right to be represented at and to participate in all tests of gas delivered hereunder or of any equipment used in measuring or determining the nature or quality of such gas and to inspect, at any time during business hours, any and all equipment used for the measurment or determination of the nature or quality of gas delivered hereunder.

15.15 From time to time as requested, and during business hours, the accuracy of the measuring party's collateral equipment shall be verified in the presence of representatives of both Seller and Buyer, and the parties shall jointly observe any adjustments which are made in such collateral equipment. If, upon any test, any collateral equipment shall be found in error, such equipment shall be adjusted at once to read accurately within the limits prescribed by the manufacturer.

15.16 Each party hereto shall cause to be preserved for a period of at least one (1) year all test data, charts and other similar records.

16.

Billing and Payment

16.01 On or before the 10th day of each month, Buyer shall render to Seller a statement showing the quantities

of gas delivered hereunder on each day during the preceding calendar month, the amounts payable hereunder therefor, the amount of any taxes required by law to be paid by Buyer on such quantities of gas delivered hereunder, which taxes are in whole or in part chargeable to Seller hereunder, and any other information required in the computation of such amounts. Seller shall render to Buyer on or before the 15th day of each month an invoice for the gas delivered during such preceding calendar month, less any deductions authorized hereunder for taxes chargeable in whole or in part to Seller but required by law to be paid by Buyer. Buyer shall, on or before the 25th day of the current month, make payment to Seller for the amounts shown to be due by such invoices.

16.02 Should Buyer fail to pay the full amount due Seller for such preceding calendar month on or before the 25th day of the current month, and any amounts due on an annual basis on or before the 25th day of the first month after the end of each year hereof, interest thereon shall accrue at the rate of six per cent (6%) per annum from the date when such payment is due until the same is paid. If such failure to pay continues for thirty (30) days, Seller may suspend deliveries of gas hereunder, or may terminate this agreement, at its option, but the exercise of such rights shall be in addition to any and all other remedies available to Seller. It is agreed, however, that if Buyer's failure to pay any amount claimed due hereon by Seller is the result of a bona fide dispute, the nature of such dispute to be evidenced by written statement of Buyer delivered to Seller, and Buyer shall likewise furnish security for the payment of such amounts as may be determined to be due after settlement of such dispute, the provisions hereof for suspending deliveries of gas or termination of this agreement shall not apply

until the final determination of such dispute. Interest on unpaid amounts as provided above in this paragraph shall be due only on such amounts as shall be determined finally to be due to Seller during such period of non-payment.

16.03 Buyer shall mail or deliver to Seller for checking and calculation, all volume, temperature and other charts and records used in the measurement of gas delivered hereunder within fifteen (15) days after the last chart for each billing period is removed from the meters. Such charts shall be mailed or returned to Buyer within thirty (30) days after receipt thereof by Seller.

16.04 Each party shall have the right at all reasonable times to examine the books, records and charts of the other party to the extent necessary to verify the accuracy of any statement, charge, computation or demand made under or pursuant to any of the provisions of this contract. Any error therein not called to the attention of the parties or protested within two (2) years shall be considered waived.

17.

Warranty of Title.

17.01 Seller hereby warrants title to all gas sold and delivered hereunder and the right of Seller to sell the same; and Seller warrants that all such gas is owned by Seller free from all liens and adverse claims, including liens to secure payment of production taxes, severance taxes, and other taxes. Seller shall at all times have the obligation to make settlements for all royalties due and payments to the mineral and royalty owners under Seller's leases, as modified by such unitization agreements, and

other documents as may appear of record or otherwise be binding upon Seller, and in accordance with the terms of the respective leases, and to make settlements with all other persons having any interest in the gas sold and delivered hereunder, and Seller agrees to indemnify Buyer and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said gas or to royalties, taxes, license fees or charges thereon which are payable by Seller hereunder. Buyer shall promptly notify Seller of all such claims, etc.

18.

Default.

18.01 It is convenanted and agreed that if either Buyer or Seller shall fail to perform any of the covenants or obligations imposed upon it or them under and by virtue of this agreement, then in such event the other party hereto may, at its option, terminate this agreement by proceeding as follows:

18.02 The party not in default shall cause a written notice to be served upon the party claimed to be in default, stating specifically the default and cause of terminating this agreement, if such default is not remedied. Thereupon the party in default shall have thirty (30) days after the service of the aforesaid notice in which to remedy or remove the cause or causes specified in the notice for terminating the agreement, and if within the said period of thirty (30) days the party in default does so remedy or remove said cause or causes, then such notice shall be considered withdrawn, and this agreement shall continue in full force and effect. In case the party

in default does not so remedy or remove the cause or causes within said period of thirty (30) days, then the party not in default may, within the next thirty (30) days terminate this agreement by giving notice in writing to such effect to the party in default, which termination shall be effective thirty (30) days from date of said notice.

18.03 Any cancellation under this article shall be without prejudice to any other rights or remedies of the parties hereunder. Without waiver of any other remedies to which the party not in default may be entitled for violations of this agreement, the failure of any party to exercise the right of cancellation contained in this article at any time shall not constitute a waiver of such party's rights under subsequent defaults. The provisions of this article shall not be applicable to the provisions of Paragraph 3.03 hereof with respect to either party's option of termination at the inception of the contract where specifically prescribed hereinabove.

19.

Force Majeure.

19.01 Neither party shall be liable to the other for any act, omission or circumstance (other than the failure to make payments of amounts due hereunder) occasioned by or in connection with, or in consequence of, any acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, sabotage, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, floods, storms, fires, washouts arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, well blowouts, freezing of wells or delivery facilities,

craterings, and the order of any court or governmental authority having jurisdiction in the premises, or by any other cause, whether of the kind herein enumerated or otherwise, not within the reasonable control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.

19.02 The settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and the above requirement that any force majeure shall be remedied with the exercise of diligence shall not require the settlement of strikes or lockouts by acceding to the demands of opposing parties.

19.03 Such cases or contingencies affecting the performance of this agreement by any party hereto shall not relieve such party of liability in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting the performance of this agreement relieve any party hereto from its obligations to make payments of amounts then due hereunder, nor shall such causes or contingencies relieve any party of liability unless such party shall give notice and full particulars of the same in writing or by telegraph to the other party as soon as possible after the occurrence relied on. The provisions of this paragraph shall not be construed to impose any obligation upon Seller or Buyer which is expressly stipulated against by other provisions of this contract, and it is expressly understood that nothing herein contained shall impair the rights of a party to cancel this agreement under the provisions of Article 3 hereof.

19.04 In the event that the taking of gas hereunder is not commenced or is interrupted in whole or in part,

whether by reason of the operation of force majeure, or for any other reason beyond the control of Seller, it shall have the right from time to time, in addition to all other rights and remedies, to sell to others or otherwise dispose of or use the gas subject to this contract, free from the provisions hereof, as Seller deems fit, to the extent of Buyer's failure to accept deliveries hereunder. Seller's commitment, disposal or use thereof shall be such as to enable Seller to commence or resume deliveries within fifteen (15) days after written notice from Buyer that Buyer is ready to commence or resume or receive deliveries hereunder. The exercise of this right to sell to others shall not be construed as impairing Seller's right to cancel this agreement in the manner otherwise provided herein in the event of default by Buyer not excused by force majeure.

20.

Arbitration.

20.01 In the cases herein for which arbitration is specifically provided, the matter in question may, on demand in writing by either party hereto made upon the other party, be submitted to arbitration. The party making such demand shall appoint an arbitrator in writing at the time the demand for arbitration is made. The other party shall within thirty (30) days after the making of such demand, appoint an arbitrator, and give notice in writing of such appointment to the party making the demand, failing in which the contention of the party making the demand for arbitration as stated in the demand shall be taken as confessed. Should an arbitrator be appointed by each of the parties hereto as herein provided, the two arbitrators so selected shall select a third arbitrator or umpire with-

in thirty (30) days after the giving of notice of the appointment of the second arbitrator. Should the two arbitrators selected by the parties hereto fail so to agree upon a third arbitrator or umpire, either party hereto may upon fifteen (15) days written notice to the other party apply to the senior judge of the Fifth Federal Judicial Circuit for the appointment of such third arbitrator or umpire. The arbitrators so appointed shall be men qualified to make the determinations involved and shall not be interested in or connected with any party, with each other, or with the controversy. They shall promptly hear any evidence which the parties may desire to submit, without limitation to technical rules of evidence controlling legal actions, and may likewise make such investigations of their own and employ their own opinions, skill and knowledge as they may see fit. The three arbitrators selected in the manner herein provided shall constitute a Board of Arbitration, and the decision of such Board arrived at by majority vote, which decision shall be made and reported within sixty (60) days from the date of the appointment of said third arbitrator, and shall be final and absolutely binding and conclusive upon both parties hereto, said arbitrators being hereby vested with the powers of appraisers and arbitrators under the laws of the State of Texas. The findings of the Board of Arbitration shall be in writing and a copy thereof filed with each of the parties hereto.

20.02 Each party shall pay the expense of the arbitrator selected by or for it and all other costs of the arbitration shall be divided equally between the parties.

21.

Notices.

21.01 Notices and statements provided to be given hereunder shall be deemed sufficiently given and served when and if deposited in the United States Mail, postage prepaid and addressed to the respective parties at the addresses stated below or to such other addresses as they shall hereafter designate in writing:

Shell Oil Company
P.O. Box 2099
Houston 1, Texas.

Texas Gas Pipe Line Corporation
Prudential Building
Houston 25, Texas.

22.

Assignability

22.01 The provisions herof shall extend to, be binding upon and inure to the benefit of the parties hereto and to their heirs, successors, assigns and legal representatives.

22.02 It is specifically provided, however, that no assignment of this contract may be made by Buyer without the prior onsent in writing of Seller. Buyer may, however, without such consent, assign this contract to secure the payment of indebtedness incurred or to be incurred, or for any purpose to a subsidiary, affiliate, successor, or controlling company of Buyer. Any breach of this Agreement will be grounds for immediate cancellation of this

contract, at Seller's election and cumulative of any other remedies available to it, if Buyer does not terminate said assignment after thirty (30) days' notice to it to do so.

23.

Full Stream Deliveries.

and

Price on Condensate and Flash Vapors.

23.01 For a period of one year from date of first deliveries hereunder, the quantities of gas well gas deliverable hereunder shall be delivered by Seller full stream, without extractions of gasoline or other liquifiable hydrocarbons, provided, however, either Seller or Buyer shall have the right to terminate such full stream deliveries by giving the other party thirty days written notice prior to the expiration of such first year. In the event neither party gives such notice, such full stream deliveries shall continue thereafter on a year to year basis, subject, however, to termination at the expiration of any subsequent year, by giving of the thirty days prior written notice by either party, as above provided.

23.02 Buyer agrees, at its expense, to install and maintain any additional facilities required or that may be necessary to receive the gas to be delivered from each of Seller's gas wells and Seller agrees at its expense to install and maintain a high pressure water knock out designed to operate at existing wellhead pressure, heater, and high-low safety valve for each such gas well; provided that a heater shall be installed only in those cases in which the temperature and/or other conditions of the

gas make it necessary to insure accurate metering or to insure continued operation of the facilities through which gas is being delivered into Buyer's line.

23.03 During any period of full stream deliveries hereunder, each gas well shall be tested each three months by Buyer or any mutually agreeable engineering testing organization, using a portable full scale conventional separator, operating at pressure of 950 pounds and a temperature of 70° Fahrenheit, to determine the quantities of separator overhead gas (including flash vapors), stock tank condensate per million cubic feet of full stream gas, and full stream specific gravity. For all such stock tank condensate, Buyer shall pay Seller the average of the prices paid for Condensate of the same or similar gravity and quality by Humble Oil and Refining Company, Gulf Refining Companf and Sun Oil Companf or their affiliated purchasing companies in the fields served by pipe lines in the Texas Gulf Coast territory. For all flash vapors Buyer shall pay Seller on the basis of the price herein provided for as to gas.

24.

Regulatory Bodies.

24.01 This contract is subject to all present and future valid orders, rules and regulations of any governmental body having jurisdiction.

Executed in duplicate originals, this the 15th daf of October, 1954, but effective as of April 30, 1954.

SHELL OIL COMPANY

By ED. CUMMING.
Vice President.

(Seal)

Attest:

Illegible
Assistant Secretary

Seller
TEXAS GAS PIPE LINE CORPORATION
By JOHN T. ASHFORD
Vice President
Buyer

Attest:
WILLIAM N. BONNER, JR.
(William N. Bonner, Jr.)
Secretary

State of Texas,
County of Harris.

Before me, the undersigned authority, on this day personally appeared John T. Ashford, Vice President of Texas Gas Pipe Line Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of Texas Gas Pipe Line Corporation.

Given under my hand and seal of office this 15 day of October, A. D., 1954.

MARJORIE BURDICK,
Notary Public in and for Harris County, Texas.

State of Texas,
County of Harris.

Before me, the undersigned authority, on this day personally appeared Ed Cumming, Vice President of Shell Oil Company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of Shell Oil Company.

Given under my hand and seal of Office this 15 day of October, A. D., 1954.

EVELYN GREEN,
Notary Public in and for Harris County, Texas.

EXHIBIT

This contract applies to the legally produced gas from the following reservoirs and to the extent of Seller's interest therein, to-wit:

All non-associated, associated, and casinghead gas reserves found in the Nome Field, Jefferson County, Texas, above the base of the "x" sand (Nodosaria), more particularly described as that sand which occurs between the electric log depths of 7825 and 7976 feet in the Sun

Oil Company's Hugh Long #3 Well, located in the John Blair Survey, Abstract 4, Jefferson County, Texas.

On a plat attached hereto as Exhibit "A" there is shown colored in yellow, within hatched lines, the surface boundaries of the properties of Shell Oil Company, which are made subject to the foregoing contract, to the extent of the gas zones and reservoirs as set forth above.

AMENDED AND SUPPLEMENTAL PETITION FOR DECLARATORY ORDER

Received Nov. 22, 3:29 PM '54, Federal Power Commission.

United States of America
Before the Federal Power Commission

In the Matter of:
Deep South Oil Company of Texas.

Docket No. G-2952.

Pursuant to Rules 1.7(c) and 1.11 of the Rules of Practice and Procedure of the Federal Power Commission, Deep South Oil Company of Texas hereby files this amended and supplemental petition for an order declaring that its sales of natural gas to Texas Gas Corporation are not subject to regulation under the provisions of the Natural Gas Act and that it is not a "natural-gas company" within the meaning of the Natural Gas Act by reason of those sales.

In support of its amended and supplemental petition Deep South Oil Company of Texas avers as follows:

1. Deep South Oil Company of Texas (hereinafter sometimes referred to as "petitioner") is a corporation organized under and existing by virtue of the laws of the State of Texas. Petitioner has its principal office in the Bowie Building, Beaumont, Texas, and also maintains an office at 342 Madison Avenue, New York 17, New York.

2. Petitioner is engaged in the business of discovering producing and selling oil and gas. The gas producing properties and leases owned by petitioner are all located within the State of Texas and all sales and deliveries of gas made by petitioner are made within the State of Texas. Petitioner does not own or operate any gas gathering or transmission lines and does not engage in the transportation of natural gas either within the State of Texas or interstate. Petitioner is not affiliated with any company that owns or operates any gas transmission lines nor is it affiliated with any integrated gas or oil company. Petitioner does not own or operate any plants for the processing of natural gas.

3. The only sales of natural gas that were being made by the petitioner on June 7, 1954, or that have been made by petitioner since that date, and the only sales that are now being made by petitioner, are made from certain oil, gas and mineral lease interests located within the State of Texas. The greatest part of the gas so sold by petitioner is sold to Texas Gas Corporation from lease interests owned by Petitioner which are located in the North Big Hill area of Jefferson County, Texas. In addition certain sales are made from these lease interests to nearby producers in the same field who require gas to operate drilling rigs. Petitioner has also made certain sales to United Gas Pipeline Company from a single well located on a lease (in which petitioner has an interest) in Refugio County, Texas.

4. The sales made by petitioner to Texas Gas Corporation are made pursuant to the terms and conditions of an agreement made as of the 15th day of February 1952 between petitioner and McCarthy Chemical Company. A copy of the said agreement marked Appendix A is attached hereto and made a part hereof. Petitioner is informed and believes that since the execution of the said agreement McCarthy Chemical Company has become Texas Gas Corporation.

5. At the present time petitioner is delivering gas to Texas Gas Corporation from 13 wells located in the North Big Hill area of Jefferson County, Texas. Since the making of the said agreement the approximate annual deliveries of gas by petitioner from its lease interests in the said area have been as follows:

1952	339,000,000 cubic feet,
1953	1,709,000,000 cubic feet,
1954 (up to and including August 31)	2,696,000,000 cubic feet.

6. The natural gas sold by petitioner to Texas Gas Corporation has been and is sold and delivered by petitioner at the head of wells located on the leases owned by petitioner in the North Big Hill area, Jefferson County, Texas and is there received by Texas Gas Corporation in pipes which it owns and has installed and attached to the producing equipment of petitioner for the purpose of receiving the said gas.

7. All of the gas sold and delivered by petitioner to Texas Gas Corporation contains liquefiable hydrocarbons and in the state in which it is sold and delivered is not suitable for ordinary industrial or domestic uses as a fuel.

Petitioner is informed and believes that after receiving the gas at the head of petitioner's wells Texas Gas Corporation transports the said gas through gathering lines, located in Jefferson County, Texas, which are owned and operated by Texas Gas Corporation, to a processing plant which it owns and operates in the said County. Petitioner is informed and believes that in the course of its movement through the said pipe lines and in the said processing plant the natural gas purchased from petitioner is commingled with gas purchased by Texas Gas Corporation in Texas from other sellers. Petitioner is also informed and believes that at the present time the volume of natural gas delivered daily by petitioner to Texas Gas Corporation is approximately 5% of the volume of natural gas that daily passes through the said processing plant of Texas Gas Corporation.

8. Petitioner is informed and believes that after the mass of commingled gas enters the said processing plant liquefiable hydrocarbons are extracted therefrom and the gas is otherwise treated so that the residue gas remaining after the processing is suitable for ordinary industrial or domestic uses as a fuel.

9. Because the gas purchased by Texas Gas Corporation from petitioner is commingled in the pipe lines of Texas Gas Corporation with gas purchased from other producers, petitioner has no knowledge or information sufficient to form a belief as to the ultimate destination or use of the particular gas that it sells to Texas Gas Corporation. The only knowledge or information which petitioner has with respect to the ultimate use or disposition of natural gas sold by Texas Gas Corporation is knowledge that relates to the mass of commingled gas collected by Texas Gas Corporation in its processing plant, and is as follows: Pe-

titioner is informed and believes that after extracting the liquefiable hydrocarbons from the mass of commingled gas in its processing plant Texas Gas Corporation sells those liquefiable hydrocarbons, but petitioner has no knowledge or information sufficient to form a belief as to the identity of the purchaser or purchasers or as to the ultimate use or destination of those products. Petitioner is also informed and believes that after extracting the liquefiable hydrocarbons from the mass of commingled gas and otherwise treating the said gas, Texas Gas Corporation sells a part of the residue gas remaining to local industrial customers who use the residue gas within the State of Texas. Petitioner is informed and believes that another part of the said residue gas remaining is returned by Texas Gas Corporation to certain producers for use in repressuring operations. Petitioner is further informed and believes that another port of the residue gas remaining is sold by Texas Gas Corporation to two interstate transmission companies. Petitioner is informed and believes that one of these companies transports in interstate commerce the residue gas which it purchases from Texas Gas Corporation. Petitioner has no knowledge or information sufficient to form a belief as to whether the other interstate transmission company transports in interstate commerce any of the residue gas which it purchases from Texas Gas Corporation.

10. Prior to, and at the time of, the execution of the agreement referred to in Paragraph 4 hereof, McCarthy Chemical Company, with whom the agreement was initially made as alleged in said paragraph, informed petitioner that the gas purchased from petitioner would be sold by McCarthy Chemical Company for use within the State of Texas. Approximately two years after the execution of the said agreement petitioner was informed by repre-

sentatives of Texas Gas Corporation that it had "dedicated" the said agreement to a contract existing between Texas Gas Corporation and a transmission company, but petitioner was not informed at that time whether the said transmission company was engaged in transporting in interstate commerce residue gas which it purchased from Texas Gas Corporation. Petitioner has no other knowledge of the truth of the statement that the said agreement between petitioner and McCarthy Chemical Company has been "dedicated" to a contract existing between Texas Gas Corporation and a transmission company and no knowledge of how or under what terms and conditions the alleged dedication is claimed to have been made. If any such dedication was made it was done without the knowledge or consent of the petitioner. It was not until after September 3, 1954, that petitioner was informed by Texas Gas Corporation that it was selling a part of the residue gas from its processing plant to an interstate transmission company which transports the gas in interstate commerce.

11. The sales of gas made by petitioner to United Gas Pipeline Company, referred to in Paragraph 2 of this petition, were made pursuant to an agreement between petitioner and United Gas Pipeline Company effective August 11, 1952. Deliveries of gas under this contract amounted to 126,439,000 cubic feet in 1953 and to 139,095,000 cubic feet up to November 1, 1954. Petitioner delivered this gas to United Gas Pipeline Company at the head of petitioner's well in Refugio County, Texas. Petitioner is informed and believes that United Gas Pipeline Company thereafter commingled the gas it received from petitioner with other gas bought from other producers and thereafter processed the mass of commingled gas or caused it to be processed. Petitioner is further informed and believes

that the residue gas remaining after the processing of the mass of commingled gas was in part sold by United Gas Pipeline Company to purchasers who used the residue gas within the State of Texas and was in part transported by United Gas Pipeline Company in interstate commerce and sold to purchasers in other states.

12. On July 30, 1954, the Federal Power Commission adopted an order bearing the number 174-A. This order sets forth the manner in which independent producers of natural gas, as defined in the order, are to comply with the provisions of the Natural Gas Act regarding the filing of rates, the making of rate changes, the issuance of certificates of convenience and necessity, the abandoning of service, and other matters, thus subjecting certain activities of certain independent producers of natural gas to federal regulation for the first time since the Natural Gas Act was passed in 1938. For a more complete and detailed statement of the terms and conditions of the order and of the restrictions which it imposes upon the activities of certain independent producers, the Commission is respectfully referred to the text of the order itself.

13. Order 174-A defines the term "independent producer" as any person "who is engaged in the production or gathering of natural gas and who transports natural gas in interstate commerce or sells natural gas in interstate commerce for resale, but who is not primarily engaged in the operation of an interstate pipeline." The order does not define the words "sells natural gas in interstate commerce for resale" nor does it announce any general rule or standard for determining whether particular sales are sales in interstate commerce for resale within the meaning of the order and the Natural Gas Act.

14. Petitioner submits that its sales of natural gas to Texas Gas Corporation and to United Gas Pipeline Company were not and are not subject to regulation under the Natural Gas Act because they were not and are not sales of natural gas in interstate commerce, and were not and are not sales of natural gas for resale within the meaning of the statute. Petitioner also submits that its facilities, operations and sales are and were excluded from federal regulation under Section 1(b) of the Act which provides that the statute shall not apply to "the production or gathering of natural gas." Petitioner is uncertain whether the Federal Power Commission believes that the Natural Gas Act is applicable to petitioner's sales and uncertain whether the Commission intended Order 174-A to apply to petitioner or expects petitioner to comply with it. If the Federal Power Commission does believe that the Natural Gas Act is applicable to the petitioner and expects petitioner to comply with the provisions of 174-A, a controversy exists which should be determined by the orderly administrative and judicial procedure contemplated by the Natural Gas Act.

15. If petitioner is required to comply with the provisions of Order 174-A, petitioner will incur the expense involved in filing rate schedules and applications for certificates of convenience and necessity and in otherwise complying with the order, and its right to deal freely with the gas which it produces will be restricted. Petitioner therefore, has a direct and substantial interest in having the uncertainty over the application of Order 174-A to its operations resolved by a prompt and authoritative determination of petitioner's status under the Natural Gas Act.

16. Furthermore, if petitioner is a natural gas company within the meaning of the Natural Gas Act and its operations are subject to the statute, certain provisions of the statute which are self-executing may apply to certain of petitioner's activities without regard to Order 174-A. For example, the provisions of the statute may require petitioner to file rate schedules, to obtain certificates of convenience and necessity for facilities used in sales subject to the jurisdiction of the Federal Power Commission, and to make annual reports to the Commission, and petitioner may be subject to criminal penalties for failure to do so. These provisions of the statute create uncertainties in relation to petitioner's activities and the conduct of its business which will exist even if Order 174-A is modified or withdrawn by the Commission. These uncertainties should be resolved by an authoritative determination of petitioner's status under the Natural Gas Act.

17. The names and addresses of all persons upon whom it is requested that copies of any papers, notices, motions, orders or other documents in this proceeding should be served are as follows:

J. Edward Jones,
President,
Deep South Oil Company of Texas, 342 Madison Avenue,
New York 17, New York.

HUGH B.COX,
Covington & Building,
Union Trust Building,
Washington 5, D.C.

Wherefore, petitioner prays

(1) That the Commission issue an order declaring (a) that petitioner's sales of natural gas to Texas Gas Corporation are not subject to regulation under the provisions of the Natural Gas Act, (b) that petitioner's shales of natural gas to United Gas Pipeline Company are not subject to regulation under the provisions of the Natural Gas Act, (c) that petitioner is not a "natural gas company" within the meaning of the Natural Gas Act, and (d) that petitioner is not subject to the provisions of Order 174-A; and

(2) That the Commission set this petition down for an early hearing so that the uncertainties now affecting petitioner's conduct of its business may be promptly resolved.

Respectfully submitted,

NEWELL W. ELLISON,
HUGH B. COX,
BURKE MARSHALL.

701 Union Trust Building,
Washington 5, D.C.

RICHARD L. FRUCHTERMAN

595 Madison Avenue
New York, New York

Counsel for Deep South Oil
Company of Texas

APPENDIX A.

Received Nov. 22, 3:30 PM '54 Federal Power Commission.

This agreement made and entered into as of this 15th day of February, 1952, by and between McCarthy Chemical Company, hereinafter called "Buyer", and Deep South Oil Company of Texas, hereinafter called "Seller",

Witnesseth:

Whereas, Seller represents that it is the owner of the oil, gas and mineral leases in the North Big Hill area, Jefferson County, Texas, described in Exhibit A attached hereto and made a part hereof, and

Whereas, subject to the provisions and conditions hereinafter set forth, Seller has agreed to sell and deliver to Buyer, and Buyer has agreed to purchase and receive from Seller, gas from any wells now or hereafter drilled on said leases described in Exhibit A;

Now, therefore, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties do hereby covenant and agree as follows:

I. Definitions—Except as otherwise indicated, the following terms as used herein shall be construed to have the following meanings:

(a) The term "day" shall mean a period of twenty-four (24) hours commencing at 7 o'clock a.m. Central Standard Time.

(b) The term "month" shall mean a period beginning at 7 o'clock a.m. on the 1st day of a calendar month and

ending at 7 o'clock a.m. on the 1st day of the next succeeding calendar month.

(c) The term "year" shall mean a period of three hundred sixty-five (365) consecutive days beginning at 8 o'clock a.m. on the date of initial delivery of gas hereunder or any anniversary thereof; provided, however, that any such year which contains a date of February 29 shall consist of three hundrer sixty-six (366) consecutive days.

(d) The term "MCF" shall mean one thousand (1,000) cubic feet.

(e) The term "Gas" shall mean natural gas of merchantable quality, as described in Article VII hereof.

(f) The term "dedicated leases" shall mean the leases and/or lands dedicated by Seller to the performance of this contract pursuant to Article IV hereof.

(g) The term "recoverable reserves" shall mean the quanity of gas economically recoverable from wells drilled on the dedicated leases as of the time of determination or redetermination of the recoverable reserves pursuant to Article V hereof, plus the total quantity of gas theretofore delivered by Seller to Buyer from the dedicated leases subsequent to the date of the initial delivery of gas hereunder.

(h) The term "daily deliverability" shall mean the maximum quantity of gas which can be withdrawn daily from the dedicated leases pursuant to the rules and regulations of the Texas Railroad Commission or any other state or Federal regulatory body and which is available

for delivery to Buyer at the point or points of delivery hereunder at the pressure required by Article VI hereof.

(i) The term "contract quantity" shall mean the quantity of gas per day, averaged over each year which Buyer is required to purchase from Seller under the provisions of sub-paragraph (a) of Article III hereof.

II. Installation Facilities—Upon receipt from Seller proof satisfactory to Buyer that Seller's existing well on the dedicated leases has a daily deliverability of not less than three thousand (3,000) MCF of gas, Buyer agrees to proceed with due diligence to install at Buyer's cost and expense the pipe line and other facilities necessary to enable Buyer to receive gas from Seller at Seller's existing well on the dedicated leases. The initial delivery of gas hereunder shall commence as soon as said facilities of Buyer shall have been completed and placed in operation.

III. Quantity.

(a) Subject to the further provisions of this contract, Seller agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, if available, a daily quantity of gas averaged over each year of the term of this contract equal to 1,000 MCF for each ten million (10,000,000) MCF of gas contained in Seller's recoverable reserves or seventy-five (75%) of Seller's average daily deliverability during such year, whichever is the lesser quantity: provided, however, that in no event shall Buyer be obligated to take an average daily quantity of gas in excess of ten thousand (10,000) MCF. Pending the determination of Seller's recoverable reserves and daily deliverability, Buyer agrees to purchase and receive from Seller

an average daily quanity of one thousand (1,000) MCF of gas.

(b) Buyer shall have the right to purchase and Seller agrees to sell and deliver to Buyer, if requested to do so, such quantity of gas in addition to the contract quantity specified in sub-paragraph (a) above as Buyer may require, provided that Seller shall never be required to deliver to Buyer in any day a quantity of gas in excess of the total daily allowable of the wells on the dedicated leases or the total maximum efficient rate of flow of such wells, whichever is the lesser quantity.

(c) If for any reason Seller shall fail during any day or days in a year to have contract quantity available for delivery to Buyer, or if Buyer is unable by reason of force majeure to take the contract quantity, then the total volume of gas which Buyer is obligated to purchase from Seller during such year shall be reduced by the difference between the contract quantity and the volume of gas actually taken by Buyer as to each such day upon which such condition or conditions occurs.

(d) If at any time the contract quantity of gas Buyer is obligated to take hereunder shall be the maximum quantity of ten thousand (10,000) MCF specified in sub-paragraph (a) of this Article III and the quantity of Seller's recoverable reserves, as shown by the determination or redetermination thereof then in effect, shall exceed one hundred million (100,000,000) MCF, then Seller shall have the right from time to time upon giving Buyer six (6) months' advance written notice of its desire to do so, to sell to other parties a daily quantity of gas (hereinafter called "excess quantity") equal to not more than one thousand (1,000) MCF for each ten million (10,000,000) MCF over

and above one hundred million (100,000,000) MCF of gas contained in Seller's recoverable reserves; provided, however, that if within ninety (90) days after receipt of any such notice, Buyer elects to begin, and obligates itself thereafter, to take hereunder all or any part of such excess quantity, Seller shall not have the right to sell to other porties the portion of such excess quantity which Buyer so elects to take.

(e) If at any time during the term hereof Seller's daily deliverability shall be less than three thousand (3,000) MCF, Buyer shall have the right to terminate this agreement upon giving Seller sixty (60) days written notice; provided that Seller shall have the right to prevent such termination by increasing Seller's daily deliverability to at least three thousand (3,000) MCF before the expiration of said sixty day period.

IV. Dedication of Reserves.

(a) Subject to the terms and provisions hereof, Seller dedicates to the performance of this contract the leases and/or lands described in Exhibit A attached hereto and made a part hereof and all other leases and/or lands which Seller may now or hereafter own or acquire during the term of this agreement in the North Big Hill area, Jefferson County, Texas.

(b) Seller reserves the right to operate the dedicated leases free from any control by Buyer in such manner as Seller may deem advisable, including without limitation the right to drill new wells, to rework old wells and to abandon any well or surrender any lease which Seller deems to be no longer productive of gas in paying quantities or without substantial value. Seller may pool or unitize

any of the dedicated leases with lands or leases of others, in which event this contract shall cover the interest of Seller in such unit and the gas produced therefrom attributable to such interest.

(c) Seller shall the right to use gas produced from the dedicated leases for the development and operation of such leases, for delivery to the lessors of the quantities of gas which such lessors are entitled to use under the terms of such leases and for the operation of any facilities which Seller may install in order to deliver gas hereunder.

V. Determination of Reserves and Deliverability—Upon the written request of either party, the parties hereto shall endeavor to determine by agreements the quantity of gas contained in Seller's recoverable reserves and Seller's estimated average daily deliverability for the next ensuing twelve (12) months. Thereafter, but not more often than once a year, upon written request of either party, the parties shall promptly endeavor to redetermine by agreement the quantity of such recoverable reserves and average daily deliverability. In the event the parties are unable to agree upon the initial determination or any redetermination within thirty (30) days after written request therefor, then the matter shall be submitted to arbitration in accordance with the provisions of Article XVIII hereof. The latest determination or redetermination shall be controlling until the next redetermination is made.

VI. Point of Delivery and Pressure—The point of delivery of the gas hereunder shall be at each of Seller's wells located on the dedicated leases. As additional wells are drilled in the field, Buyer agrees, after receipt of written notification from Seller as to completion of each such well, to proceed with due diligence to install and

place in operation such lateral lines and other facilities as may be necessary to enable Buyer to receive deliveries of gas at such wells. Buyer shall install and operate at its expense a metering station with standard orifice meters and the necessary appurtenances at each point of delivery. If requested to do so by Buyer, Seller shall install and operate at Seller's expense a heater and Hydracepter at each point of delivery. The gas shall be delivered by Seller at each point of delivery at a pressure sufficient to enable the gas to enter Buyer's lines against the pressure from time to time existing therein, provided that Seller shall not be obligated to deliver gas hereunder at a pressure in excess of one thousand (1,000) pounds per square inch gauge.

VII. Quality—The gas shall be delivered by Seller in a full stream in its natural state without the extraction therefrom of any gasoline or other liquefiable hydrocarbons. Seller agrees that the gas will be merchantable gas commercially free of solids, dust, liquid water and hydrates and shall contain not more than forty (40) grains of sulphur per MCF, of which not more than twenty (20) grains thereof shall be organic sulphur. The gas shall have a temperature of not more than 120° Fahrenheit and shall have a total heating value of not less than one thousand (1,000) BTU per cubic foot. In the event the average heating value of the gas in any month falls below one thousand (1,000) BTU per cubic foot, then Buyer shall have the right to reduce the total amount payable as the purchase price for separator overhead gas for such month by an amount determined by multiplying such total amount by a fraction having as its numerator the deficiency in BTU below one thousand (1,000 and as its denominator one thousand (1,000).

VIII. Measurement.

(a) The unit of volume for all gas delivered hereunder shall be a cubic foot of gas at a temperature of sixty degrees (60°) Fahrenheit and at a pressure of fourteen and sixty-five hundredths (14.65) pounds per square inch absolute. Whenever conditions of temperature and pressure differ from such standard, conversion of the volume from such conditions to the standard conditions shall be made in accordance with the Ideal Gas Laws, corrected for deviation of the gas from Boyle's Law in accordance with the methods prescribed by the Railroad Commission of Texas.

(b) All liquid volumes shall be corrected for temperature and reported as volume at sixty degrees (60°) Fahrenheit.

(c) Full stream gas volumes will be measured by orifice meters installed and operated by Buyer and corrected to standard conditions as previously defined, using an average of the actual flowing temperatures at the orifice meter or meters and the calculated full stream gas gravity as hereinafter provided.

(d) The total heat value of the gas may be determined by taking samples of the gas at each delivery point at such times as may be designated by Buyer but not more often than once each month, and having the British thermal unit content per cubic foot determined by calorimeter test at the expense of Buyer. The British thermal unit content per cubic foot shall be as determined by an accepted type of recording calorimeter for a cubic foot of gas at a temperature of sixty degrees (60°) Fahrenheit when saturated with water vapor and at an absolute pres-

sure equivalent to thirty inches (30″) of mercury at thirty-two degrees (32°) Fahrenheit.

(e) Tests to determine sulphur and hydrogen sulphide content shall be made by approved standard methods in general use by the gas industry.

(f) The accuracy of Buyer's measuring equipment shall be verified at least once each month and at other times upon request of Buyer or Seller to the other. Tests for quality of the gas may be made at the time of testing equipment or at other times, but not more often than once each month. Notice of the time and nature of each test shall be given by Buyer to Seller sufficiently in advance to permit convenient arrangement for Seller's representative to be present. Measuring equipment shall be tested by means and methods in general use by the gas industry. Tests and adjustments shall be made in the presence of and observed by representatives of both Buyer and Seller, if present. If, after proper notice, either Buyer or Seller shall fail to have a representative present, the results of the tests shall nevertheless be considered accurate until the next test. All tests shall be made at the expense of Buyer, except in the case of special tests requested by Seller, in which case Seller shall bear the expense thereof if the inaccuracy found is two per cent (2%) or less.

(g) If at any time any of the measuring or testing equipment is found to be out of service, or registering inaccurately in any percentage, it shall be adjusted at once to read accurately, within the limits prescribed by the manufacture. If such equipment is out of service, or inaccurate by an amount exceeding two per cent (2%) at a reading corresponding to the average rate of flow for the period since the last preceding test, the previous

readings of such equipment shall be disregarded for any period definitely known or agreed upon, or if not so known or agreed upon, for a period of sixteen (16) days or one-half of the elapsed time since the last test, whichever is shorter. The volume of gas delivered during such period shall be estimated by (a) using the data recorded by any check measuring equipment if installed and accurately registering, or if not installed or registering accurately (b) by correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation, or if neither such method is feasible (c) by estimating the quantity, delivered, based upon deliveries under similar conditions during a period when the equipment was registering accurately. No correction shall be made for recorded inaccurances of two percent (2%) or less.

(h) Seller shall have the right to install and operate check measuring equipment which shall not interfere with the use of Buyer's measuring equipment. Buyer and Seller shall have the right to inspect equipment installed or furnished by the other, and the charts and other measurement or testing data of the other, at all times during business hours; but the reading, calibration and adjustment of such equipment and changing of charts shall be done only by the party installing and furnishing the same. Each party shall preserve all original test data, charts and other similar records, in such party's possession, for a period of at least six (6) years.

IX. Testing—The full stream gas from each well shall be tested each three months (quarterly) by Southern Petroleum Laboratories, or any other reputable Engineering Testing Organization approved by both Buyer and Seller, to determine the quantities of (1) separator overhead

gas, and (2) stock tank condensate per million cubic feet of full stream gas.

This quarterly test shall be made by the "Split-Stream" Sampling Method, using a primary separator operating at a pressure of 950 pounds per square inch gauge and a temperature of 70 degrees Fahrenheit to determine the following data:

(a) Stock tank condensate, expressed in barrels of condensate per million cubic feet of full stream gas.

(b) Separator overhead gas, expressed as cubic feet per million cubic feet of full stream gas.

(c) Water production, expressed as barrels per million cubic feet of full stream gas.

The above and any other necessary data will be used to compute the full stream gas gravity.

The volume of gas and quantities of condensate, as determined by each test, shall be the basis of measurement for all gas and condensate delivered into the pipe line for the next succeeding three (3) months period. However, should the results of two successive tests differ, the volumes of gas and gas condensate delivered during the period intervening between such tests shall be considered to be the average volumes of the two tests; that is to say that the average volume shall be one-half of the total of the two volumes from the two tests, and on determination of such average volumes an adjustment of accounts shall be made between the parties in the next payment to be made under the terms of this agreement.

X. Price—On the basis of the above described tests made on the full stream gas, Buyer shall pay to Seller the following prices:

(a) For separator overhead gas, the sum of ten cents (10c) per MCF during the first ten (10) years following the initial delivery of gas hereunder. Thereafter, for each of the two (2) succeeding five year periods following said initial ten (10) year period, the price to be paid for separator overhead gas shall be determined on the basis of written contracts existing on the date of the beginning of each five (5) year period, and the price to be paid for each such five (5) year period shall be the equivalent of the average of the three highest prices for gas (excluding gas condensate and other liquid hydrocarbons) paid to producers in Railroad Commissioner District No. 3 (as now constituted) by three different transporters at the date upon which such period begins, as set forth in written contracts providing for daily deliveries over a similar period of time and upon substantially the same terms of quality, measurement and delivery as set forth herein, and covering (as to each such contract) the purchase of a daily average quantity of gas not exceeding the contract quanity then in effect hereunder. For the purpose of this paragraph, a "producer" is herein defined as a party or group of parties operating one or more properties for gas producing purposes, and a "transporter" is herein defined as a company engaged in the purchase of gas from producers for subsequent distribution and sale to the general public.

(b) For stock tank condensate, the average price for crude oil comparable grade and quality as posted for fields located in the vicinity of the North Big Hill Field, Jefferson County, Texas, by the three major purchasers

of crude oil from such fields on the date of delivery of such stock tank condensate.

XI. Taxes—Seller shall pay all taxes imposed and at the rates prescribed upon the production and severance of gas in effect as of the date of this contract. In the event of an increase in the cost to Seller, occurring after said date, occasioned by an increase in taxes imposed and/or of the imposition or substitution of sales, occupation, gathering, export or excise taxes, or taxes having a similar effect, in addition to any applicable taxes in effect as of the date of this contract, Buyer will pay or reimburse Seller for three-fourths (3/4) of such increase, in the event Seller has paid same, by increasing the price of the gas sold subject to such increased tax to the extent of three-fourths (3/4) of the amount of increase in cost to Seller caused by any such increased, substituted or new taxes. There shall not be included in such additional or increased taxes any income taxes, general ad valorem property taxes, or such other taxes of like nature as may hereafter be imposed. In case any such adjustment in taxes is to be made for any year, Seller shall notify Buyer immediately and shall, within ninety (90) days after the end of such year, prepare and submit to Buyer a statement setting forth the amount of such increase in cost to Seller caused by new or additional taxes that it has paid during such year. Within thirty (30) days after submission of such statement, an adjustment between the parties shall be made by Buyer reimbursing Seller to the extent of three-fourths (3/4) of such increase in cost due to new or additional taxes as herein defined which Seller shall have so paid. Buyer agrees in addition, to pay or cause to be paid, all taxes and assessments imposed on Buyer with respect to the gas delivered hereunder after its receipt by Buyer.

XII. Billing and Payment.

(a) Payment shall be made by Buyer to Seller on or before the 20th day of each calendar month for all gas purchased during the preceding calendar month.

(b) If Buyer shall in any year during the term of the agreement take an average daily quantity of gas less than the contract quantity, Buyer shall, within thirty (30) days after the end of such year, pay to Seller for such deficit in takings the price specified in sub-paragraph (a) of Article X hereof for separator overhead gas; but in no event shall Buyer be obligated to pay for the stock tank condensate of the full stream gas contained in the contract quantity of gas available but not taken. In the event Buyer shall make any such payment to Seller for any such deficit in takings, Buyer shall have the right during the succeeding year to make up for such deficit in takings by applying against such deficiency the separator overhead gas contained in the gas taken during such succeeding year in excess of the contract quantity; it being understood that Buyer shall not be required to pay Seller for separator overhead gas applied in any year against a deficiency which shall have arisen during the previous year and for which payment shall have already been made; and it being further understood that Buyer shall be obligated to pay Seller in accordance with paragraph (b) of Article X hereof for the stock condensate of the full stream gas contained in the bas taken in excess of such contract quantity during such succeeding year and for which such stock tank condensate, payment shall not have already been made.

(c) Should any payment due to be made to Seller hereunder not be made within fifteen (15) days after

due date, as herein provided for, Buyer shall pay interest thereon from original due date until paid at the rate of six per cent (6%) per annum.

XIII. Term—This agreement shall be effective from the date hereof and shall continue and remain in full force and effect for a term of twenty (20) years from the date upon which Seller commences delivery of gas to Buyer hereunder.

XIV. Regulatory Bodies—This agreement is subject to all present and future valid orders, rules and regulations of any state or Federal regulatory body having jurisdiction.

XV. Default—It is covenanted and agreed that if either party hereto shall fail to perform any of the covenants or obligations imposed upon it under and by virtue of this agreement, including without limitation the obligation to pay for gas and condensate purchased hereunder, then in such event the other party hereto may at its option terminate this agreement by proceeding as follows: The party not in default shall cause a written notice to be served on the party in default stating specifically the cause for terminating this agreement and declaring it to be the intention of the party giving the notice to terminate the same; thereupon the party in default shall have thirty (30) days after the service of the aforesaid notice in which to remedy or remove the cause or causes stated in the notice for terminating the agreement, and if within said period of thirty (30) days the party in default does so remedy or remove said cause or causes and fully indemnify the party not in default for any and all consequences of such breach, then such notice shall be withdrawn and this agreement shall continue in full

force and effect. In case the party in default does not so remedy or remove the cause or causes or does not indemnify the party giving the notice for any and all consequences of such breach, within said period of thirty (30) days, then this agreement shall become null and void from and after the expiration of said period. Any cancellation of this agreement pursuant to the provisions of this Article shall be without prejudice to the right of Seller to collect any amounts then due for gas delivered prior to the time of cancellation, and shall be without prejudice to the right of Buyer to receive any gas for which it has paid but has not received, although entitled thereto, prior to the time of cancellation, and without waiver of any remedy to which the party not in default may be entitled for violations of this agreement.

XVI. Warranty of Title—Seller hereby warrants title to all gas delivered by Seller to Buyer hereunder, that Seller has the right to sell such gas and that it is free from liens and adverse claims of every kind. Seller shall pay or cause to be paid all taxes and assessments levied on the gas prior to its delivery to Buyer and all royalties, overriding royalities or like charges against said gas or the value thereof. Seller agrees to indemnify and save Buyer harmless against all loss, damage and expense of every character on account of adverse claims of any and all persons to or against said gas. In the event any adverse claim of any character whatsoever is asserted in respect to any of the gas delivered hereunder, Buyer may withhold payment (without interest) of all sums due hereunder up to the amount of the claim until such claim has been finally determined, or until Seller furnishes bond conditioned to save Buyer harmless in an amount and with sureties satisfactory to Buyer.

XVII. Force Majeure—In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this agreement, other than to make payments due hereunder, it is agreed that on such party giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery, lines of pipe or Buyer's gasoline plant, the necessity for making repairs to or alterations of machinery, lines of pipe or Buyer's gasoline plant, freezing of wells or lines of pipe, temporary failure of wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include (a) in those instances where either party hereto is required to obtain servitudes, rights of way grants, permits or licenses to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such servitudes, rights of way grants, permits or licenses, and (b) in those instances where either

party hereto is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permission from any governmental agency to enable such party to fulfill its obligations hereunder, the inability of such party to acquire or the delays on the part of such party in acquiring at reasonable cost and after the exercise of reasonable diligence, such materials and supplies, permits and permissions. It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the party having the difficulty.

XVIII. Arbitration—Any controversy between the parties arising undre this contract not resolved by agreement shall be determined by a board of arbitration upon notice of submission given either by Buyer or by Seller to the other party also naming one arbitrator. The party receiving such notice shall, within the (10) days thereafter, by notice to the other, name the second arbitrator, or failing so to do, the party giving notice of submission shall name the second. The two (2) arbitrators so appointed shall name the third, or failing to do so within the (10) days the third arbitrator may be appointed by the person who is at the time the senior judge of the United States District Court for the Southern District of Texas.

The arbirators selected to act hereunder shall be qualified by education and training to pass upon the particular question in dispute. Therefore, it is agreed that if an engineering question is involved, qualified engineers shall

be appointed, if a legal question is involved, qualified lawyers shall be appointed, and similar procedure will be followed in connection with other questions.

The abritrators so appointed shall promptly hear and determine (after given the parties due notice of hearing and a reasonable opportunity to be heard) the questions submitted, and shall render their decision within sixty (60) days after appointment of the third arbitrator. If within said period a decision is not rendered by the board or a majority thereof, new arbitrators may be named and shall act hereunder at the election of either Buyer or Seller in like manner if none had been previously named.

The decision of the arbitrators, or of a majority thereof, made in writing shall be final and binding upon the parties hereto as to the questions submitted, and Buyer and Seller will abide by and comply with such decision. The expenses of arbitration, including reasonable compensation to the arbitrators, shall be borne equally by Buyer and Seller, except that each party shall bear the compensation and expenses of its counsel, witnesses and employees.

XIX. Miscellaneous

(a) This agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

(b) Each notice, request or statement provided for in this contract shall be made or delivered to the party to whom given at such parties address as follows:

Buyer—McCarthy Chemical Company, Fifth Floor—Shell Building Houston, Texas.

Seller—Deep South Oil Company of Texas, 342 Madison Avenue, New York, New York.

or at such other post office address as such party shall from time to time designate as the address for such purpose by registered letter addressed to the other party.

In Witness Whereof, this contract is executed in duplicate originals as of the day and year first above written.

McCARTHY CHEMICAL COMPANY.

By (S.) R. M. RIGGINS,
President.
(initals illegible) JTA

Attest:

(S.) A. C. GLADDIN,
Secretary.

DEEP SOUTH OIL COMPANY OF TEXAS.

By (S.) J. EDWARD JONES,
President.

Attest:

(S.) GLADYS H. FLAGG,
Secretary.

State of Texas
County of Harris.

Before Me, the undersigned authority, on this day personally appearer R. M. Riggins, President of McCarthy Chemical Company, known to me to be the person whose

name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of McCarthy Chemical Company for the purposes and consideration therein expressed.

Given under my hand and seal of office this 15th day of February, 1952.

(S.) MILDRED MORRIS BEALL,
(Mildred Morris Beall),
Notary Public in an for Harris County, Texas.

State of Texas,
County of

Before me, the undersigned authority, on this day personally appeared J. Edward Jones, President of Deep South Oil Company of Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of Deep South Oil Company of Texas for the purposes and consideration therein expressed.

Given under my hand and seal of office this 14th day of February, 1952.

(S.) JUNE OWENS,
(June Owens),
Notary Public in and for Harris County, Texas.

EXHIBIT A.

1. Oil, gas and mineral leases dated September 10, 1951, from Security State Bank and Trust Company to Deep South Oil Company of Texas, recorded Volume 827, page 70, Deed Records, Jefferson County, Texas, covering the following described property in Jefferson County, Texas, to-wit:

All of the West one-half (W½) of Section No. One Hundred Seventy Five (175) of Texas & New Orleans Railway Co. Survey, Jefferson County, Texas;

South one-half (S½) of North East one-fourth (NE¼); all of the West one-half (W½) of the Southwest one-fourth (SW¼); all of the Northeast one-fourth (NE¼) of Southwest one-fourth (SW¼) of Section No. One Hundred Fifty Five (155) of Texas & New Orleans Railway Company Survey, Jefferson County, Texas;

Lots Nos. One (1); Two (2); Three (3); Fifteen (15); Sixteen (16); Seventeen (17); Eighteen (18); Twenty-four (24); Twenty-six (26); Twenty-seven (27); Twenty-nine (29); Thirty-one (31); and Thirty-two (32), being out of the Charles & Anton Benson Subdivision of Section One Hundred Sixty Three (163) of the Texas & New Orleans Railway Survey, Jefferson County, Texas;

Lots Nos. Six (6); Seven (7); Eight (8); Nine (9); Ten (10); Eleven (11); Fourteen (14); Fifteen (15); Sixteen (16); Seventeen (17); Eighteen (18); Nineteen (19; Twenty-five (25); Twenty-six (26); Twenty-eight (28); Thirty-seven (37); Thirty-eight (38); Forty (40); Forty-one (41); Forty-two (42); Forty-three (43); Forty-four (44); Forty-five (45); Forty-six (46); Forty-seven

(47); Forty-eight (48); Fifty-one (51); Fifty-four (54); Fifty-five (55); Fifty-seven (57); Fifty-eight (58); and Fifty-nine (59) out of the Charles & Anton Benson Subdivision of Texas & New Orleans Railway Co. Survey Section No. One Hundred Sixty-four (164), Jefferson County, Texas.

2. Oil, gas and mineral lease dated January—, 1952, from C. Doornbos as Lessor to Deep South Oil Company of Texas as Lessee covering the following described property in Jefferson County, Texas, to-wit:

Lots Nos. Twenty-nine (29); Twenty-three (23); Twenty-two (22), Twenty (20); and Twelve (12) out of the Charles & Anton Benson Subdivision of Texas and New Orleans Railway Company Survey, Section One Hundred Sixty-four (164), Jefferson County, Texas.

State of New York,
County of New York ss.

Before me, a Notary Public in and for the said county and state, personally appeared J. Edward Jones, who being duly sworn deposes and says:

I am president of Deep South Oil Company of Texas, the petitioner herein, and I have read the foregoing Amended and Supplemental Petition for a Declaratory Order, and the facts stated therein are true and correct to my knowledge exsept those matters whidh are alleged on information and belief, and as to those allegations I believe them to be true.

(S.) J. EDWARD JONES,

Subscribed and sworn to before me this 18th day of November, 1954.

(S.) EDITH E. MACKNIGHT,
(Seal) Notary Public.

Edith E. MacKnight, Notary Public, State of New York, No. 03-7656050, Qualified in Bronx County, Certificate Filed in N. Y. Co., Commission Expires March 30, 1956.

Certificate of Service.

I hereby certify that a copy of the Amended and Supplemental Petition for Declaratory Order was mailed, postage prepaid, this 22nd day of November, 1954 to Vinson, Elkins, Weems & Searls, Esperson Building, Houston, Texas and Oliver L. Stone, Legal Department, Shell Oil Company, 50 West 50th Street, New York 20, New York, Attorneys for Shell Oil Company and to Wesley West, Box 1656, Houston, Texas.

(S.) HUGH B. COX,
(Hugh B. Cox),
Attorney for Deep South Oil Company of Texas.

DESIGNATION OF PRESIDING EXAMINERS.

Federal Power Commission Docketed Nov. 24, 1954, Docket Section Secretary's Office.

Federal Power Commission.

Files 100-2 Formal.

In the Matters of:

Deep South Oil Company of Texas, Wesley West, Shell Oil Company.

Docket No(s). G-2952, G-4450, G-4671.

FPC From No. 152, Revised August, 1947 April, 1952, and April, 1954.

The Commission, by order issued October 28, 1954, as amended by order issued Novmber 18, 1954, having ordered that a public hearing be held in the above-entitled matter(s), to convene at 10:00 o'clock a.m., on November 29, 1954, and the Chairman of this Commission having, on September 18,1953, delegated to the Chief Examiner the power and authority to assign Hearing Examiners to cases in accordance with the provisions of Section 11 of the Administrative Procedure Act, Hearing Examiner Edward B. Marsh is hereby designed to preside at the said hearing.

Done at Washington, D.C., this 24th, day of November, 1954.

EDWARD B. MARSH,
Chief Examiner.

MOTION TO CONSOLIDATE AND PETITION FOR LEAVE TO INTERVENE.

Dockets Nos. G-2952, G-4671,G-5261.

Nov. 26, 1954, Received.

United States of America, Federal Power Commission.

In the Matters of:
Deep South Oil Company of Texas, Shell Oil Company, Humble Oil & Refining Company.

Rex G. Baker
Nelson Jones
Carl Illig
P. O. Box 2180
Houston 1, Texas

Bernard A. Foster, Jr.
Ross, Marsh & Foster
725-15th Street, N. W.
Washington 5, D. C.
Attorneys for Petitioner
Humble Oil & Refining Company

November 26, 1954.

Comes now Humble Oil & Refining Company (Humble) and files this, its Motion asking that its "Petition for Declaratory Order to Remove Uncertainty Concerning Sales of Casinghead Gas at or near the well Arising from the Issuance of Order No. 174-A and for Declaration of Statute," filed this 26th day of November, 1954, be consolidated with the petition filed by Deep South Oil Com-

pany of Texas (Deep South, at Docket No. G-2952 and the petition filed by Shell Oil Company (Shell) at Docket No. G-4671; and also its Petition for leave to intervene in the heretofore consolidated proceedings at Docket Nos. G-2952 and G-4671. As grounds in support of such Motion and Petition, Humble shows as follows:

I.

Humble's Motion is filed pursuant to Section 1.20(b) of the Commission's Rules of Practice and Procedure. Its Petition is filed pursuant to Section 15(a) of the Natural Gas Act and to the Commission's Rules of Practice and Procedure, including particularly Section 1.8 thereof.

II.

The exact legal name of Movant and Petitioner is Humble Oil & Refining Company, a corporation organized and existing under the laws of the State of Texas, having its principal place of business at 1216 Main Street, Houston 1, Texas.

The names and addresses of persons to whom communications are to be sent in regard to this petition are:

Carl Illig
P. O. Box 2180
Houston 1, Texas

Bernard A. Foster, Jr.
725-15th Street, N. W.
Washington 5, D.C.

III.

On August 12, 1954, Humble filed with the Commission its Application for Rehearing of the Commission's Order No. 174-A, issued on August 6, 1954. In response to

Humble's telegraphic inquiry of November 3, 1954, the Commission by telegram, dated November 5, 1954, advised Humble that its Application for Rehearing was still under consideration and that the Commission would inform Humble when its Application for Rehearing is finally acted upon.

Humble has daily expected that the Commission would issue an order finally disposing of its Application for Rehearing, and further that in such order the Commission would make clear the Commission's views respect to its jurisdiction in relation to the sales which are the subject of Humble's Petition for Declaratory Order, filed in the above-entitled proceeding. In such event, of course the filing of said petition might be unnecessary. But the Commission has not yet acted finally on Humble's Application for Rehearing, referred to above.

IV.

Humble has entered into a number of casinghead gas contracts under which it sells and delivers casinghead gas to various buyers under factual situations substantially similar to the contract and factual situation involved in the petition filed by Shell as Docket No. G-4671. Even a cursory comparison of Humble's Petition for Declaratory Order with that filed by Shell will suffice to establish that they involve common questions of fact and law. By the same token, common question of fact and law exist in petitions of Humble and Deep South, in substantially the same way as Shell described those in its petition and that of Deep South in Shell's Motion to Consolidate, filed on November 5, 1954, to which the Commission referred in its "Order Consolidating Proceedings and Fixing Date of Hearing," issued November 18, 1954.

V.

So far as Humble can determine, the Commission has not separately published notice of the filing of Shell's petition, on November 5, 1954. However, the Commission has issued an "Order Consolidating Proceedings and Fixing Date of Hearing," wherein Shell's petition at Docket No. G-4671, was consolidated with the petition filed by Wesley West at Docket No. G-4450,[1] and the petition filed by Deep South at Docket No. G-2952. This order bears issue date of November 18, 1954, but Humble is informed that it has not yet been officially published in the Federal Register. By this order, the Commission fixed November 29, 1954, as the date upon which hearings in the consolidated dockets are to commence.

VI.

In these circumstances, Humble submits that a consolidated hearing and disposition of its Petition for Declaratory Order, together with those filed by Deep South at Docket No. G-2952 and by Shell at Docket No. G-4671, will be to the mutual advantage of all concerned, particularly enabling a conservation of the time and energy of the Commission and its staff.

VII.

With respect to Humble's sales of casinghead gas referred to in Section IV above, Humble either has heretofore filed applications for certificates of public convenience and necessity, or is preparing to file such applications before December 1, 1954. All of such applica-

[1] Humble understands that a Notice of Withdrawal has been filed by the Petitioner in this docket.

tions are made subject to all of the objections to Order No. 174-A set forth in Humble's Application for Rehearing, and in addition set forth specific reasons why Humble believes such sales are not subject to the Commission's jurisdiction.

Humble does not believe that its sales of casinghead gas under any such casinghead gas contracts are subject to the jurisdiction of the Commission under the Natural Gas Act. And it has daily expected, as already noted, that the Commission would issue an order finally disposing of Humble's Application for Rehearing, and further that in such order, the Commission would make clear its views with respect to its jurisdiction in relation to sales of casinghead gas such as those of Humble referred to above.

In the absence of such a definite order, Humble claims that it has a direct interest in the proceedings at Docket Nos. G-2952 and G-4671 of such a nature that intervention is necessary or appropriate to the administration of the Natural Gas Act. Precedents will be established by decisions in these proceedings, and assuming that such precedents will be followed by the Commission, it is clear that Humble's rights will be directly affected in relation to its sales of casinghead gas referred to above. Moreover, Humble submits that it will be in the interest of the Commission and of the public for the Commission to consider the impact of declaratory decisions sought herein as they bear upon casinghead gas sales which are consummated in factual circumstances such as those involved in Humble's operations. Adequate presentation of these situations will be insured only through granting leave for Humble to intervene.

VIII.

Humble's position in the proceedings at Docket Nos. G-2952 and G-4671 will be in support of the petitioners, consistent with the views taken by Humble in its Application for Rehearing, referred to above.

IX.

The instant proceedings are not usual, and their very nature points to the desirability of efforts to counsel and assist the Commission in resolving the jurisdictional issues posed herein, which are of great public importance. It will be Humble's purpose, if permitted to intervene at Docket Nos. G-2952 and G-4671, to assist in contributing such aid to the Commission.

X.

Wherefore, Humble prays that the Commission grant its Motion to Consolidate its Petition for a Declaratory Order with those filed at Docket Nos. G-2952 and G-4671; and further that the Commission issue an order granting it leave to intervene and admitting it as a party in Docket Nos. G-2952 and G-4671, including the right to have notice of and appear at all hearings, to file pleadings, to produce evidence and witnesses, to examine and cross-examine witnesses, to be heard by counsel and other representatives, to submit briefs, to make oral argument if oral argument be had, and to do any and all things which any other party may properly do.

Respectfully submitted,

REX G. BAKER,

NELSON JONES,

CARL ILLIG.

P. O. Box 2180,
Houston 1, Texas.

BERNARD A. FOSTER, JR.
ROSS, MARSH & FOSTER.
Attorneys for Petitioner,

725—15th Street, N. W.,
Washington 5, D. C.
HUMBLE OIL & REFINING COMPANY.
By: (S.) BERNARD A. FOSTER, JR.
(Bernard A. Foster, Jr.).

Dated at Washington, D. C.

November 26, 1954.

United States of America.

City of Washington,
District of Columbia ss.

Benard A. Foster, Jr., beinf first duly sworn according to law, deposes and says that he is attorney for Humble Oil & Refining Company, the Movant herein, that he is authorized to verify and file with the Federal Power Commission this "Motion to Consolidate and Petition for Leave to Intervene"; that he has read said pleading and is familiar with the contents thereof, that all averments of facts therein contained, are true to the best of his knowledge, information, and belief.

(Signed) BERNARD A. FOSTER, JR.,
(Bernard A. Foster, Jr.).

Sworn to before me and subscribed in my presence by the said Bernard A. Foster, Jr., this 26th day of November, 1954.

(Signed) ELIZABETH MAYNARD,
(Elizabeth Maynard).
Notary Public.

(Seal)

My commission expires: September 14, 1958.

CERTIFICATE OF SERVICE.

I, Bernard A. Foster, Jr., hereby certify that I have this day served the foregoing "Motion to Consolidate and Petition for leave to Intervene" upon all parties of record in these proceedings by mailing a copy thereof properly addressed to:

J. Edward Jones, President,
Deep South Oil Company of Texas,
342 Madison Avenue,
New York, New York.

Hugh B. Cox, Esquire,
Covington & Burling,
Deep South Oil Company of Texas,
701 Union Trust Building,
Washington 5, D. C.

John T. Miller, Esquire,
Texas Gas Corporation,
Gallagher, Connor & Boland,
821—15th Street, N. W.,
Washington, D. C.

Norman Duke, Esquire,
Doerner, Rinehart, Stuart & Clammer,
1001 Connecticut Avenue,
Washington, D. C.

Oliver L. Stone, Esquire,
Shell Oil Company,
50 East 50th Street,
New York, New York.

Wesley West,
P. O. Box 1656,
Huston, Texas.

(Signed) BERNARD A. FOSTER, JR.,
(Bernard A. Foster, Jr.).

ORDER FURTHER CONSOLIDATING PROCEEDINGS AND PERMITTING INTERVENTIONS.

United States of America Federal Power Commission.

Before Commissioner: Jerome K. Kuykendall, Chairman; Claude L. Draper, Nelson Lee Smith, Seaborn L. Digby and Fredrick Stueck.

In the Matters of
Deep South Oil Company, Docket No. G-2952.
Shell Oil Company, Docket No. G-4671.
Humble Oil and Refining Company, Docket No. G-5261.

Humble Oil and Refining Company (Humble), a Texas corporation with its principal place of business in Houston, Texas, on November 26, 1954, filed a petition for de-

claratory order determining jurisdiction and a motion to consolidate and petition to intervene in the proceedings in Docket Nos. G-2952 and G-4671. The petition for declaratory order alleges that Humble is engaged in the business of exploring for, producing, refining and marketing petroleum and its products. Incidental to such business Humble produces casinghead gas with it sells to processing plant for the extraction of natural gasoline and other liquefiable hydrocarbons. The surplus residue gas after such extraction may be sold by the processing plant operator in interstate commerce for resale.

Petitions to intervene in the above proceedings have been filed as follows:

Petitioner—Docket No.—Dated Filed.

Texas Gas Corporation—G-2952—November 17, 1954.
Shell Oil Company of Texas—G-2952—November 18, 1954
Kansas Natural Gas, Inc.—G-2952—November 18, 1954
Humble Oil and Refining Company—G-2952 and G-4671 —November 26, 1954
Kansas Natural Gas, Onc.—G-4671 and G-5261—November 1, 1954.

Texas Gas Corporation asserted an interest in the above proceeding in that it purchases the natural gas produced and sold by Deep South Oil Company.

Shell Oil Company of Texas, Kansas Natural Gas, Inc. and Humble Oil and Refining Company seek to intervene in support of the petitions for declaratory orders alleging a similarity of situation.

The Commission by order issued November 18, 1954, consolidated Docket Nos. G-2952 and G-4671 and set the matter for hearing on November 29, 1954. The Examiner, at the hearing convened on that date conditionally permitted the participation of all interveners as well as the presentation of evidence by Humble Oil and Refining Company pending action by the Commission on the petition to intervene and the petition for a declaratory order. The hearing was recessed on December 2 to be reconvened on January 10, 1955.

The Commission finds:

(1) It is necessary and appropriate to carry out the provisions of the Natural Gas Act that the above-listed dockets be consolidated for purposes of hearing.

(2) The petitioners may have an interest in and participation of the above-named petitioners in this proceeding may be in the public interest.

The Commission orders:

(A) The proceedings in the above-listed dockets be and the same are hereby consolidated for the purpose of hearing.

(B) The above-named petitioners be and they hereby are permitted to become interveners in this proceeding, subject to the rules and regulations of the Commission: Provided, however, That the participation of such interveners shall be limited to matters affecting asserted rights and interests specifically set forth in the petitions for leave to intervene: and Provided, further, That the admission of such interveners shall not be construed as recognition by

the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

By the Commission.

LEON M. FUQUAY,
Secretary.

Adopted: December 8, 1954.

Issued: December 14, 1954.

Received Jan 3, 2:58 PM '55.

Western Union.

NSA122.

1955, Jan 3, PM 2:29.

NS.LLJ172 long pd. Fax New Orleans La 3 1245PMC.
Secretary Federal Power Commission.
441 G St North West WashDC.

Re: Consolidated dockets Nos. G-2952, G-4671 and G-5261 on December 2, 1954. Hearing on these dockets was recessed with tentative date for cross examination fixed at January 10. If FPC staff counsel desire to resume hearing to cross examine any Shell witnesses on January 10, Shell Oil Company requests that hearing be put off until January 24.

QLIVER L STONE Attorney for Shell Oil Co 50 West 50th St NewYork NY.

1955, Jan 3 PM 2:43.

Federal Power Commission, Docketed Jan. 3, 1955.

Filed Jan. 12, 1955. Office of the Secretary, Federal Power Commission.

United States of America,
Federal Power Commission.

In the Matters of:
Deep South Oil Company, Shell Oil Company, Humble Oil and Refining Company.
100-2 Formal.
Docket Nos. G-2952, Docket No. G-4671, Docket No. G-5261.

Memorandum For the Commission:

This proceeding is upon the several petitions of Deep South Oil Company of Texas, Shell Oil Company and Humble Oil and Refining Company, filed pursuant to Sections 1.7(c) and 1.11 of the Commission's Rules of Practice and Procedure and Section 5(d) of the Administrative Procedure Act, requesting that this Commission issue an order declaring that operations of the respective petitioners are not subject to regulation under the provisions of the Natural Gas Act.

At the conclusion of the hearing held herein, the last session of which was held on January 10, 1955, Staff Counsel moved for the omission of the intermediate decision procedure. Counsel for Shell Oil Company opposed that motion. Counsel for the other parties to the proceeding stated no position with respect thereto. The motion is herewith transmitted to the Commission for its consideration and disposition.

There are attached hereto, for the information of the Commission, pages 593 thru 595, inclusive, of the transcript of the proceeding upon which appear the motion of Staff Counsel and the statement of counsel for Shell Oil Company.

Respectfully submitted this 11th day of January, 1955.

EDWARD B. MARSH,
(Edward B. Marsh),
Presiding Examiner.

EBM emc.

Federal Power Commission, Docketed Jan. 12, 1955, OMJ, Docket Section Secretary's Office.

Pages 593 thru 595, inclusive, of the transcript of the proceeding—appears in this record at pages 593-595.

ORDER DENYING MOTION TO OMIT THE INTERMEDIATE DECISION PROCEDURE.

United States of America,
Federal Power Commission.

Jan. 19, 1955.

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Seaborn L. Digby and Frederick Stueck.

In the Matter of:
Deep South Oil Company of Texas, Humble Oil & Refining Company, Shell Oil Company.
Docket No. G-2952, Docket No. G-5261, Docket No. G-4671.

Commission Staff Counsel, on January 10, 1955, at the conclusion of the hearing in the above-captioned consolidated proceeding, moved orally on the record for omission of the intermediate decision procedure herein. Counsel for Shell Oil Company opposed the motion. The other parties to the proceeding took no position for or against the motion. The Presiding Examiner has certified the relevant portion of the record in this proceeding to us for consideration of the motion.

Staff Counsel asserted as support for his motion the importance of prompt Commission determination of the questions involved in this proceeding in order to enable both industry and Staff to know the extent of Commission jurisdiction.

It does not appear that efficient administration of the Natural Gas Act unavoidably and imperatively requires that the initial determination of questions presented in this proceeding should not be made by the Presiding Examiner.

The Commission finds:

Due and timely execution of the functions of the Commission does not unavoidably and imperatively require omission of the intermediate decision procedure in this proceeding.

The Commission orders:

The motion made by Commission Staff Counsel to omit the intermediate decision procedure in this proceeding be and the same is hereby denied.

By the Commission.

LEON M. FUQUAY,
Secretary.

Adopted: January 19, 1955.

Issued: January 25, 1955.

* * * * * * * *

DECISION.

United States of America,
Federal Power Commission.

In the Matters of:
Deep South Oil Company of Texas, Humble Oil & Refining Company, Shell Oil Company.
Docket No. G-2952, Docket No. G-5261, Docket No. G-4671.

Upon Petitions for Orders to Remove Uncertainties as to Status.

EDWARD B. MARSH,
Presiding Examiner.

Filed: April 4, 1955.

Issued: Apr. 5, 1955.

DECISION.

United States of America,
Federal Power Commission.

In the Matters of:
Deep South Oil Company of Texas, Humble Oil & Refining Company, Shell Oil Company,
Docket No. G-2952, Docket No. G-5261, Docket No. G-4671.

Upon Petitions for Orders to Remove Uncertainties as to Status.

Appearances:

For Deep South Oil Company of Texas

Hugh B. Cox, Esquire, Washington, D. C.
Newell Ellison, Esquire, Washington, D. C.
Harold Willcox, Esquire, Washington, D. C.
Richard L. Fruchterman, Esquire, New York, N. Y.

For Shell Oil Company

Oliver L. Stone, Esquire, New York, N. Y.
R. H. Whilden, Esquire, Houston, Texas
David T. Searls, Esquire, Houston, Texas

For Kansas Natural Gas, Inc.,

Dale E. Doty, Esquire, Washington, D. C.
Norman E. Duke, Esquire, Washington, D. C.

For Humble Oil & Refining Company

Carl Illig, Esquire, Houston, Texas

Rex G. Baker, Esquire, Houston, Texas
Nelson Jones, Esquire, Houston, Texas
Bernard Foster, Jr., Esquire, Washington, D. C.

For Texas Gas Corporation

William N. Bonner, Jr., General Counsel, Houston, Texas
Richard J. Connor, Esquire, Washington, D. C.
Christopher T. Boland, Esquire, Washington, D. C.
John T. Miller, Jr., Esquire, Washington, D. C.
George J. Meiburger, Esquire, Washington, D. C.

For the Staff of the Federal Power Commission

William J. Grove, Esquire
Phebe Eppes Gordon, Attorney

Marsh, Presiding Examiner: This proceeding is upon the separate and several petitions of Deep South Oil Company of Texas (Deep South), Humble Oil & Refining Company (Humble) and Shell Oil Company (Shell), filed pursuant to Section 1.7(c) of the Federal Power Commission's Rules of Practice and Procedure and Section 5(d) of the Administrative Procedure Act, praying, in each instance for an order to remove uncertainty as to petitioner's status and declaring that its sales of natural gas as described in its petition is not subject to regulation under the provisions of the Natural Gas Act (the Act), and that the petitioner is not, therefore, a "natural-gas company" within the meaning of the Act by reason of such sales.

Deep South (Docket No. G-2952) filed its petition on September 22, 1954, and the Commission, on October 28, 1954, issued an order setting that matter down for hearing on November 29, 1954. Shell, on November 5, 1954 (Docket No. G-4671) filed a similar petition, and on November 9, 1954, a motion requesting that the proceeding at Docket No. G-4671 be consolidated for hearing with Docket No. G-2952. Texas Gas Corporation (Texas Gas), on November 17, 1954, filed a petition to intervene in Docket No. G-2952 and on November 18, 1954, Shell filed a similar petition. By order issued November 18, 1954, the Commission consolidated for purposes of hearing Docket Nos. G-2952 and G-4671 [1] without however, changing the date of hearing as theretofore fixed.

On November 22, 1954, Deep South filed an amended and supplemental petition in which there was included for adjudication also sales of natural gas by that petitioner to another purchaser. On November 26, 1954, Humble (Docket No. G-5261) filed its petition to which reference has been made and, simultaneously therewith, filed a motion requesting that such petition be consolidated for hearing purposes with Docket Nos. G-2952 and G-4671, and asking leave to intervene in those two proceedings.

On December 1, 1954, Kansas Natural Gas, Inc. (Kansas Natural) filed a petition to intervene in the three above named proceedings in support of the

[1] The proceeding entitled Wesley West Docket No. G-4450, was also included among those consolidated for hearing, but before the hearing date the petition in that case had been withdrawn.

petitions filed herein. By order issued December 14, 1954, the Commission consolidated the three proceedings for hearing purposes and permitted Texas Gas, Shell and Kansas Natural to intervene in Docket No. G-2952, Humble to intervene in Docket Nos. G-2952 and G-4671, and Kansas Natural to intervene in Docket Nos. G-4671 and G-5261.

Pursuant to the orders of the Commission consolidating the proceedings and setting them down for hearing, the matters came on for hearing, and were heard, before this Examiner, which hearing was concluded on January 10, 1955. At the end of the hearing, Staff counsel moved orally on the record for the omission of the intermediate decision procedure. The motion was opposed by counsel for Shell, and on January 25, 1955 it was denied by the order of the Commission.

Subsequently, pursuant to provision made therefor by the Examiner, Deep South, Shell, Humble, Kansas Natural and the Staff of the Commission filed briefs. The matter is, therefore, ready for decision.

The Issues.

As has been indicated, the issues herein with respect to Deep South, Shell and Humble are whether the sales of natural gas as described in each of their several petitions are sales in interstate commerce of natural gas for resale and therefore subject to the provisions of the Natural Gas Act; and whether the petitioner in each instance is a "natural-gas company" within the meaning of the Act.

The Petitioners and Their Operations.

There is no evidence that any of the petitioners has any corporate or other relationship with any other petitioner. The sales of natural gas by each of the several petitioners are physically unrelated to each other. However, because of the seeming similarity between the characteristics of the operations of each of the petitioners and the circumstances surrounding such operations, the Commission concluded that common questions of fact and of law were involved; and it was for that reason that the proceedings were consolidated for hearing. In order to make a determination of the issues involved, it is necessary, therefore, to review the evidence relating to the several petitioners, and the sales of natural gas by each of them, as it appears in the record of the proceedings.

Definitions.

Before turning to a consideration of the evidence relating to the business, facilities and operations of the several petitioners, it would be well to define some of the terms which will be more frequently mentioned herein.

"Oil wells" are wells that are producing from a producing zone where the major consideration for which the wells were drilled, or for which they are operated, is the production of crude oil.

"Full stream gas wells", "straight gas wells" and "gas distillate wells" are synonymous terms, and the gas produced therefrom is "gas well gas". The testimony of a witness with 32 years experience in

natural gas engineering is that it is difficult to draw a line between "casinghead gas" and "gas well gas", but if such a line must be drawn, "casinghead gas" associated with oil usually has a larger percentage of liquefiable hydrocarbons than does "gas well gas".

"Casinghead gas" is gas that is produced along with oil from an oil well. It may be either "solution gas" which is in solution in the oil in the reservoir, or it may be "gas cap gas" which overlies the oil producing horizon. "Casinghead gas" also includes gas which has been introduced into the oil reservoir for the purpose of forcing the oil to the surface. Thus, in the Standard Form Revised contract of the Natural Gasoline Association of America, November 7, 1932, appears the statement "(* * *the term 'casinghead gas' means the gas issuing from oil wells whether produced from the same sand or strata from which the oil is produced or by the induction of gas with compressors or other means for flowing the oil)". In a revision of that form of contract, which appears to have been adopted in 1939, there was added to the foregoing definition the phrase, "gas vaporized from oil after production)".

"Casinghead gas" ordinarily consists of fixed gases, principally methane in bulk, with other hydrocarbons, ranging from the lighter ones down to the quite heavy ones. Mixed with those hydrocarbons are water vapor [2] acid gases, hydrogen sulphide and/or carbon dioxide. There are other fairly common diluents such as nitrogen, helium and various sulphur compounds, and impurities and foreign substances such as drilling mud, rust, sand and dirt.

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[2] To be distinguished, of course, from "free water".

The testimony is that the principal component of natural gas as used by the ultimate consumer is methane. Ordinarily there will be about one-tenth as much ethane as methane and methane constitutes the bulk of the gas which is transmitted through the interstate transmission lines. The evidence shows, however, that the principal components of gas from gas wells are the same as the principal components of gas used by its ultimate consumer.

A "separator" is a tall, relatively narrow tank in which the pressure maintained is quite low compared with that of the gas in the flow line before it enters that piece of equipment.[3] Because of the reduction in pressure from that in the flow line to that in the separator and the increase in the space in which the gas is contained within the separator, there takes place a separation of the gas from the heavy liquid hydrocarbons and any slugs of free water. The crude oil and water pass out of the bottom of the separator, the oil moving into storage tanks. The gas passes out the top of the separator, into what is called a "vent" line. All of the liquefiable hydrocarbons do not go out with the oil, but several are carried out, instead, along with the gas. Among

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[2] To be distinguished, of course, from "free water".

[3] In the Shell separators the pressure maintained is only nine pounds. Deep South uses two of these pieces of equipment, one of which is a 1,000 pound separator and the other a 150 pound separator. Shell's wells must be pumped, while the gas from Deep South's wells flows at 3,000-3,500 pounds pressure.

the latter are natural gasoline, butanes, propane, and with respect to Shell's gas (infra, p. 18) a great deal of sulphur.

Deep South is a small, unintegrated, individually owned oil company which is also engaged in the exploration for, and the production of, natural gas. The company is an "independent" natural gas producer, which is to say that it does not engage in the interstate transmission of natural gas from the producing fields to consumer markets. In fact, Deep South owns no transmission lines, nor does it own or operate any facilities for the processing of natural gas by the removal therefrom of liquid hydrocarbons or moisture. Neither is Deep South affiliated with any "integrated" oil or gas company, or any company which owns or operates any transmission or processing facilities.

The company owns, or has an interest in, certain oil and gas properties, all of which are located within the State of Texas. Other than those interests, Deep South's gas and oil facilities consist only of oil and gas well equipment, the flow lines which extend from the wells, the separators to which such flow lines extend, heaters, valves, tanks, meters and such other minor equipment as is required for the operations of such wells and lines.

Deep South owns a small lease in the Sour Lake field upon which there is a single small oil producing well, and another small lease in the Refugio field on which there is one gas well. The company holds under lease 640 acres in the Winnie-Stowell field on which there is a single gas well, but from which no

gas has been sold because Deep South has been unwilling to seek a certificate of convenience and necessity from this Commission authorizing the sale of gas therefrom. The company's remaining, and principal, properties and operations are in the Big Hill area in Jefferson Couty, Texas. On the 1,020 acres which Deep South there has under lease, there are eighteen producing wells.

As has been noted, the single well on Deep South's Sour Lake field lease is an oil well, and it produces no gas.

The single gas well in the Refugio field produces about 500,000 cubic feet of gas a day. From the well the gas flows to a separator which is situated on the lease. The gas flows from the separator through Deep South's pipe line a distance of roughly 500 to 600 feet to the edge of the lease where it passes through a meter belonging to the United Gas Pipe Line Company (United). It then passes into a pipe line which is also owned by the purchaser. United transports the gas a distance of about a mile to a stripper plant and from thence it flows to United's Refugio compressor station. After leaving the compressor station, the gas flows into United's system. After the gas is delivered by Deep South to United, the former no longer has any control over it and immediately thereafter it is commingled with gas from many other producers in the area. At United's compressor station it is commingled with still other producers' gas.

Aside from the fact that the gas flows into United's system, which is an integrated interstate pipe line

system, the evidence does not disclose the destination of the gas which Deep South sells to United in the Refugio field.

However, United's annual report to the Railroad Commission of Texas covering United's system sales of natural gas within the State of Texas for the year ended December 31, 1953 shows total sales of 408,574,240 Mcf. Of that total, about 90% appears to have been sold for use within the State of Texas.

The gas which is thus sold and delivered to United is sold by Deep South under a contract executed on August 11, 1952 between United as Buyer and Deep South and other producers in the Refugio field as Sellers.

Of the eighteen wells owned and operated by Deep South on its leases in the Big Hill area, nine are "full stream gas wells", five are "casinghead gas wells" and the remainder are straight oil wells. The gas and oil produced from Deep South's "casinghead gas wells" originate at a depth of from 10,000 to 10,500 feet. At that depth, the pressure is approximately 4,000 to 4,500 pounds per square inch, and the temperature ranges from 200 to 215 degrees Fahrenheit. At the surface of the earth the pressure has dropped to from 3,000 to 3,500 pounds and the temperature to 100 to 110 degrees. After reaching the well head the effluent flows through several pieces of equipment to the 1,000 pound separator. There physical separation occurs between the heavier fluids and the lighter gases as described above, and the latter flow out of the top. Within a few feet from the point at which the gas leaves the separa-

tor, it passes into facilities, including meters, which are the property of Texas Gas Corporation. The meters there measure the gas and at that point it is sold and delivered to Texas Gas. Thereafter Deep South has no ownership or control over it.

The operations thus described are typical of the installations and operations at those of Deep South's wells which produce casinghead gas.

The "full stream gas" as it comes from the well does not contain crude oil, but it has in it hydrocarbons which have condensed due to the reduction in pressure and in temperature of the gas between those at the bottom and those at the mouth of the well. The gas from those wells, after passing through the well control head, flows to what is called a "free-water knockout". In that piece of equipment the free water is removed. However, in connection with the production from this type of well a separator is not used. Therefore, after the gas has passed through the free-water knockout it is still saturated with water vapor, and the hydrocarbons remain as liquids. As such, they are transported along with the gas through Deep South's facilities to the point at which the delivery of the gas is made to Texas Gas. After passing through the free-water knockout the gas flows into a "full stream test loop", and on to the meter run. At the test loop, quarterly tests are made from which is determined the amount of liquefiably hydrocarbons in the gas stream, and on the results of those tests payment for the gas is calculated. At the meter run, which is the property of the Buyer, the gas is metered and delivered to Texas

Gas. In every instance the meter run for the well is on Deep South's lease.

In addition to the gas which Deep South sells to Texas Gas, now and then it sells some gas produced in the Big Hill area to drilling rigs for drilling purposes in the field. The company also uses some casinghead and separated full stream gas for power generation for its own use.

A witness testified that difficulty had been encountered in the movement of gas from the Deep South wells into Texas Gas' Winnie plant because of the freezing up of the line due to moisture and liquids in the line. Difficulty has been encountered in the movement of casinghead gas through the pipe lines due to long lines and cool temperatures and the condensation of liquefiable hydrocarbons. Used in the boiler burners, the liquefiable hydrocarbons cause very inefficient burning, and carbon deposits form on the firing tubes with a lowering of efficiency.

Sales of full stream gas by Deep South from the Big Hill acreage are made under a contract dated February 15, 1952, between Deep South and McCarthy Chemical Company. Subsequently, the name of the Buyer was changed to Texas Gas. The testimony presented on behalf of Deep South was that at the time the contract was entered into it was the policy of Texas Gas not to sell gas for interstate transmission and it was understood between the parties that the gas so sold and purchased would be sold to local industries.

It should be pointed out, however, that the contract between Deep South and McCarthy contains no provision prohibiting sales of gas to other than local consumers, nor was the inclusion of such a condition insisted upon at the time of the sale.

It was not until the early part of the Summer of 1954 that Deep South learned that Texas Gas had, in fact, "dedicated" to Texas Eastern Transmission Company, an interstate transmission line, the reserves underlying the Deep South acreage.

The "point of delivery" as set out in the contract is "at each of Seller's wells located on the dedicated leases". It is agreed that the gas shall be delivered in a full stream in its natural state without the extraction therefrom of gasoline or other liquefiable hydrocarbons.

The gas is tested each three months to determine the quantities of (1) separator overhead gas, and (2) stock tank condensate per million cubic feet of full stream gas. On the basis of such tests, Texas Gas is to pay Deep South for separator overhead gas 10c per Mcf for the first ten years of the term. Escalator provisions are applicable to the two succeeding 5-year periods. For stock tank condensate, Texas Gas is to pay the average price for crude oil of comparable grade and quality posted by three major crude oil producers in the area.

Texas Gas' Winnie Plant is located about 7 miles from the Deep South wells in the Big Hill area. In the region surrounding that plant, Texas Gas takes gas from in excess of 300 other wells.

The gas which is produced at each of Deep South's wells passes through small lines into a larger line in which the gas from all of Deep South's wells is commingled. The larger line is, in turn, interconnected with a still larger line which extends from the LaBelle field into the Winnie Plant. In the latter line gas produced by Deep South and by other operators in the Big Hill, North Big Hill and LaBelle fields is commingled and the commingled stream moves into the Winnie Plant.

At the plant the gas flowing in through the LaBelle-Winnie line, together with that from the high pressure lines from other fields, flows into a high-pressure leader. From there it flows into a separator, and then into an absorber. In the absorber the gas and the liquid hydrocarbons which are in association with the gas move in at the bottom and rise to the top. As they do so, absorption oils flowing in at the top and moving downward absorb the liquid hydrocarbons. In this process, a part of the butanes and propanes, practically all of the pentanes and the heavier hydrocarbons are eliminated from the gas.[4] After passing out of the top of the adsorbers the residue gas moves into the sales header from which it flows into the distribution lines, with which, in turn, are connected the lines of United Gas Pipeline Company, Texas Eastern Transmission Company (Texas Eastern), Texas Gas Pipe Line Company (Pipe Line) and others.

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[4] Those liquids then flow to fractionating towers where they are cut into the different components.

The evidence is that the process just described involves, and results, in no chemical change whatever in the gas.

In addition to the residue gas going into the sales header from the source above described, some additional residue gas is derived from a process by means of which high test gasoline is made. In that process a chemical change takes place, but the volume of gas which may be attributed to that source is not disclosed and must not be significant. After the gas passes through the other processes it is compressed to the necessary pressure and dehydrated.

The gas which flows into the Winnie plant is a combination of volumes of gas which Texas Gas purchases from producers and volumes received under processing agreements under which gas is received and processed by Texas Gas, and the residue therefrom is delivered back to or for the account of the company for whom it is processed.

In addition to the gas which flows into the Winnie Plant from the Big Hill and LaBelle fields as has been described, gas also flows into that plant from fields lying north, south and west of the plant. Also at present gas received in the neighborhood of Texas Gas' Orange Plant, by purchase as well as for processing, moves from that plant in a westerly direction into the Winnie Plant. Thus, at present there is no gas moving from the Winnie Plant to a point of delivery of gas to Texas Eastern just east of the Orange plant.

At the present time approximately 39,108 Mcf of gas is being delivered into a line which extends from

the Winnie Plant in a northeasterly direction to Beaumont. From that line, some 18,000 Mcf is delivered to United Gas Pipe Line Company at a point some 8½ miles northeast of the plant, and 6,512 Mcf is delivered to Texas Eastern after processing at a point 11¼ miles northeast of the plant. The remainder moves to the neighborhood of Beaumont where it is sold to industrial and electrical generating plants. At present none of that gas goes on to the Orange Plant, and none of it is delivered to Texas Eastern at the Orange Plant delivery point.

Upon the initiation of service by Texas Gas to Texas Gas Pipe Line Company, and in turn to Transcontinental Gas Pipe Line Corporation, as is authorized by the Commission in Docket Nos. G-2405 and G-2406, approximately 56,697 Mcf a day will be put into the Winnie-Beaumont line at Winnie. The delivery to United from that line will have been discontinued. However, there will continue to be delivered to Texas Eastern from the processing delivery point the 6,512 Mcf mentioned above. Some 35,986 Mcf will be delivered from that line into the Beaumont-Orange Plant line. Thereafter, gas processed in the Winnie Plant, including gas purchased by Texas Gas from Deep South, will be delivered to Texas Eastern in the amount of about 6,512 Mcf a day from the Winnie-Beaumont line, 35,986 Mcf will be delivered in the Beaumont-Orange line and an extension thereof and a portion of this gas will cross the Texas-Louisiana State line and will then enter into Transcontinental's interstate pipe line. In addition, the flow of gas from the Orange Plant to the Winnie Plant having been reversed, the gas which will then be delivered to Texas Eastern at the Orange Plant

delivery point will also be gas which was processed and commingled at the Winnie Plant.

A portion of the gas flowing from the Winnie Plant is delivered at the tailgate thereof to United Gas Pipe Line Company and to Pan American Gas Company; some of it is returned to the producers for lease use and some is used in the plant for fuel, processing and compression.

The record shows that the gas which Texas Gas purchases from Deep South is a very small percentage of the total volume which passes through the Winnie Plant. It shows that the gas which Texas Gas purchases represents less than a third of the total processed at the plant. The gas which is not purchased by Texas Gas is processed pursuant to agreements with the owners referred to above. But the gas from the several sources is not physically segregated and therefore it becomes part of the commingled whole.

The evidence shows, too, that large quantities of gas from the Winnie Plant are sold to local industries and are thus consumed within the State of Texas.

Shell Oil Company.

Shell Oil Company is engaged in the business of exploring for, producing, refining and marketing petroleum and petroleum products. It is alleged in the Company's petition that Shell is not engaged in the business of transporting natural gas in interstate commerce, and that the petitioner does not own or operate facilities subject to the jurisdiction of the

Federal Power Commission under the Natural Gas Act. There is no evidence in this record that Shell is the owner or operator of facilities employed in the interstate transportation of natural gas, and for the purposes of this determination, it is assumed that this petitioner is not otherwise subject to the provisions of the Natural Gas Act.

The evidence presented herein by Shell shows that the company is producing casinghead gas from 19 oil wells on the McClintic lease in the McElroy field in Crane County, Texas. The sale of the casinghead gas produced from those wells is made under a contract entered into on May 7, 1936 between International Petroleum Corporation as Seller and Phillips Petroleum Company as Buyer. Subsequently the business of the seller was sold to Amtex Petroleum Company and, on February 4, 1938, Amtex assigned the lease to Shell. Since then Shell has been the owner and operator thereof.

Phillips' Crane Plant is between five and six miles from the McClintic lease. Although the Crane Plant started operations in 1929, it was not until 1950 that Phillips began selling the residue gas therefrom.

With respect to each of Shell's wells there has been installed a flow line through which the gas flows from the well to a single separator located on the lease. In the separator there occurs the separation of the heavy liquid hydrocarbons and such free water as may occur therein, in the manner described in connection with the operations of Deep South. Just beyond the point of departure of the pipe line from

the separator, the residue gas is delivered into the facilities and custody of Phillips.

All of the liquid hydrocarbons are not removed from the gas stream by the separator but some remain therein thereafter. At the point of delivery the gas contains methane, ethane, natural gasoline, butane, water vapor, and an exceptionally large amount of hydrogen sulphide. The testimony presented by Shell is that not until the hydrogen sulphide and carbon dioxide are removed is the gas fit for industrial or domestic use.

The testimony is, too, that a common requirement for natural gas that is to be transported in high pressure transmission lines is dehydration to prevent freezing and stoppage of the line. Another requirement is that hydrogen sulphide be removed to very small tolerances. A third requirement is that the quantity of liquefiable hydrocarbons shall not exceed a reasonable limit. Furthermore, the incombustible diluent materials, carbon dioxide or nitrogen, or both must not be present in appreciable amounts.

Shell's witness, a man with long experience in the gas business, testified that in order for the gas here involved to meet these requirements it would have to be treated (1) for the removal of hydrogen sulphide, (2) for the removal of the liquefiable hydrocarbons, and (3) for the removal of moisture (dehydrated).

The gas in the reservoir underlying this lease in solution with oil in formation. The nineteen wells are what are known as "pumping wells" in that arti-

ficial pressure must be applied in order to lift the effluent from the oil formation to the surface.

From the point of delivery by Shell, the gas flows through a small line belonging to Phillips a distance of 1,531 feet where it interconnects with Phillips' main gathering system. After the delivery to Phillips, Shell has no more control over the gas.[5] The gas from Shell's lease is commingled with gas from other sources at the point where the lateral from Shell's lease interconnects with Phillips main gathering system. From that point of interconnection the gas flows north to the Crane Plant, further commingling, as it proceeds, with gas from other wells.

Phillips' gathering system in the Crane area consists of four large lines which lead into the Crane Plant and smaller lateral lines which extend from leases such as Shell's to those larger gathering lines There are 897 wells in the area which are connected through separators to Phillips' lines. The production from those wells flows through the gathering system into the Crane Plant.

From 33 to 34 million cubic feet of residue gas a day is taken into the Crane Plant from wells in the area. Of that amount, something less than 500,000 cubic feet is received from Shell's wells.

At the Crane Plant the commingled gas is run through scrubbers in which the crude oil and water, which is occasionally entrained in the gas, is removed. The gas is then compressed from about three pounds, the pressure at which it enters the

[5] Infra, p. 39-41.

plant, to about 50 pounds. It is then cooled to drop out any liquid which might have been condensed. From there it flows to absorbers in which the liquefiable hydrocarbons are absorbed from the gas. The gas goes out of the absorber through other scrubbers and it is then ready for residue gas disposition.

A part of the residue gas goes to plant and lease fuel but the greater portion of it is sold to El Paso. That which is to be used as fuel is treated for the removal of hydrogen sulphide and carbon dioxide so as to increase its efficiency. The residue gas delivered to El Paso, which averages from 20 to 23 million cubic feet a day, is not treated further and it contains hydrogen sulphide, carbon dioxide and moisture.

El Paso removes the hydrogen sulphide, carbon dioxide and moisture and compresses the gas from about 40 pounds to between 550 to 600 pounds.

In the Nome field in Jefferson County, Texas, Shell owns a lease upon which there are nine oil wells and one gas well. Shell has entered into a contract with Texas Gas Pipe Line Company under the terms of which Shell has agreed to sell to Pipe Line all of the seller's interest in the gas produced from the oil reserves underlying its properties in that field.

The evidence shows that Texas Gas Pipe Line Company (Pipe Line) is a wholly owned subsidiary of Texas Gas Corporation. Texas Gas Corporation is, as we have seen, the owner and operator of a gathering system which surrounds and serves its Winnie Gasoline plant. The evidence discloses that

among Texas Gas' gathering lines, one extends from the Winnie Plant in a northerly direction a distance of about 4½ miles.

On October 15, 1954 Shell entered into a contract with Pipe Line under the provisions of which Pipe Line agreed to construct a line extending from Shell's lease in the Nome Field to an interconnection with the gathering line owned and operated by Texas Gas above mentioned and to sell and deliver to Pipe Line gas produced by Shell in the Nome Field. The delivery of casinghead gas was to be made at a central point in the field, gas well gas at or near each well. Pipe Line agreed to receive "[or] cause to be received by a gatherer for the account of Buyer and to purchase Seller's gas at the delivery points in the field and under the terms and conditions" in the contract contained.

Texas Gas was not a party to this contract but executed a separate instrument in which it guaranteed the performance of the contract by Pipe Line.

The contract provides that Seller may extract, or permit the extraction of, natural gasoline, butane, propane and other hydrocarbons, except that only such methane may be extracted as is necessary to extract the other "products", and "[S]eller may subject, or permit the subjection of the gas to compression, cooling, cleaning and other processes." he hydrogen sulphide content [6] is limited and the gas must be commercially "[f]ree of crude oil, free water, solids, dust, and other objectionable substances

[6] This provision has no significance in the Nome Field.

which would render said gas unsuitable to Buyer's customers." The contract specifically provides that "[S]eller shall not be required to install or operate dehydration facilities."

There is, however, a later provision which provides that the gas well gas deliverable under the contract shall be at full stream without extraction of gasoline or other hydrocarbons, provided, that either party shall have the right to terminate full stream deliveries upon notice. During any period of full stream deliveries Buyer is to compensate Seller for the condensate extracted therefrom subsequnt to delivery by Seller to Buyer.

The price is a fixed rate for each one thousand cubic feet of gas (without reference to the liquid hydrocarbon content) with provision for periodic increases in price.

Shell's gas from the Nome Field will flow through Texas Gas' North Winnie-Winnie Plant lines into Texas Gas' Winnie Plant described above. There it will flow through the equipment and in the manner described above in connection with the movement of Deep South gas.

The deliveries by Texas Gas to Pipe Line at the point below the Orange Plant have been described above.

Humble Oil & Refining Company.

In this proceeding, Humble seeks an order declaring that sales of casinghead gas which it makes under forty-eight certain casinghead gas contracts are not

sales of natural gas subject to the jurisdiction of this Commission. Thirty-six of those contracts are on a "standard" form of casinghead gas contract [7] and under them Humble sells casinghead gas to Phillips Petroleum Company and some 12 other purchasers of casinghead gas in some 20 fields in one New Mexico, and fifteen Texas, counties. Eight of the contracts are also on a standard form of casinghead gas contract [8] but slightly amended. They are between Humble and El Paso Natural Gas Company and are for the sale of casinghead gas produced by Humble in Lea County, New Mexico, and in two counties in Texas. Humble makes four sales of casinghead gas (one to Phillips Petroleum Company, two to the Texas Company and one to Stanolind Oil and Gas Company), in the Stowell and Hastings fields in Texas, under what is described as "Division Orders".

These casinghead contracts have become in their general terms more or less standardized. Those with which we are here concerned were entered into by Humble with parties owning and operating processing plants. Under them Humble contracted to deliver to the Buyer, at the outlet of the lease separator, which is on or near the lease, the raw casinghead gas produced thereon. With only two exceptions, the title to the gas sold by Humble thereunder passes to the purchaser at the lease separator. In those two instances title passes on adjoining leases

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[7] "Standard Form Revised—Adopted by Natural Gasoline Association of America, November 7, 1932."

[8] "Standard Form 1939—An exact reproduction of the form formerly sponsored by the Natural Gasoline Association of America."

2340 and 3020 fee, respectively, distant from the lease separators.

A "Gas Division Order" is used for the purpose of showing the division of ownership both as to the working and the royalty interests and of giving to the operator the right to purchase the gas and to use it or sell it to someone else for the account of the joint owners. Under such an order the operator can sell and deliver the casinghead gas to a purchaser for the account of the other joint owners of interests.[9]

Casinghead gas sold by Humble under those contracts and orders moves from the wellhead through flow lines and other equipment similar to that through which gas produced by Deep South and Shell moves. After delivery to the purchaser it moves on into the casinghead gas gathering system and into a processing plant where it is processed to remove impurities and the heavier liquefiable hydrocarbons. The gas from which those hydrocarbons have been removed passes out of the plant and from that point may be returned to the lease for lease operations, or it may be sold for local use, or it is delivered to a "gathering line" of a gas transmission company.

Except with respect to one,[10] under all of the casinghead gas contracts above referred to Humble

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[9] Apparently the only significant difference between the contract and the order is that the latter is subject to revocation a t the wil of the joint owners.

[10] Under the contract between Humble and El Paso covering gas from the Spraberry area the seller has the right to take in lieu of a portion of the proceeds from liquid products, the products in kind.

receives as payment a portion of the net proceeds received by the processing plant operator for the sale of the residue gas (after lease and plant uses, and after the deduction of certain costs such as for sweetening the gas, or further compression of the gas in order to effect delivery to the residue gas purchaser) and a certain part or portion of the proceeds received by the plant operator from the sale of the liquefied products removed from the raw gas.

Under the Standard Form contract the amount to be paid the Seller is related to the gasoline content of the gas and the sale price of gasoline as quoted on the market. In the El Paso contracts (the 1939 form amended slightly) the amount is related to the sales price of gasoline as stated in the contract.

The testimony is that under the casinghead gas contracts, Humble as seller has no control over the buyer's sale of the residue gas.

For the purpose of this proceeding Humble made inquiry of all parties with whom Humble has contracts for the sale of casinghead gas. From that inquiry Humble determined that the forty-eight contracts referred to above "[w]ere the cases in which the gas under such casinghead contracts as we have does so move across state lines, or a part of it, at least, from the residue gas from the plant."

Discussion of the Contentions.

The uncertainty as to status which occasioned the filing by petitioners of their several petitions arose out of the issuance by the Commission of its Order

No. 174 (and the successors thereto). That order, in turn, was necessitated by the practical considerations arising from the decision of the United States Supreme Court on June 7, 1954 in Phillips Petroleum Company v. Wisconsin, et al, 347 U.S. 672. We are not called upon here, however, to deal with the question of the validity of order No. 174, but rather with the question whether the jurisdictional status of the petitioners is such as to require their compliance with such order.

The contentions of the several petitioners, and the intervener Kansas Natural Gas, Inc., are quite similar and may be epitomized as follows:

1. Petitioners' sales are excluded from regulation by the Federal Power Commission by reason of the provisions of Section 1(b) of the Natural Gas Act to the effect that the statute shall not apply to the "production or gathering" of natural gas.

2. The "casinghead gas" and "gas well gas" sold and delivered by petitioners at the well head is not the same product as the surplus residue gas which is later sold by the plant operator, after the intervention of processing, to an interstate pipeline company, nor is it "natural gas" as the term is defined in the Act.

3. Petitioners' sales are not "sales for resale", but for manufacture.

4. The sales of petitioners are not sales "in interstate commerce" of natural gas for resale.

The Natural Gas Act provides, in part, as follows:

"Sec. 1(b). The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas." (Emphasis added).

As defined in Section 2 of the Act:

"Natural gas" means either natural gas unmixed, or any mixture of natural gas and artificial gas;

"Natural-gas company" means a person engaged in the transportation of natural gas in interstate commerce or the sale in interstate commerce of such gas for resale."

Exemption under Sec. 1(b).

In its opinion in the Phillips case, Supra., the Commission had made it quite clear that Phillips' sales as involved therein were sales in interstate commerce of natural gas for resale for ultimate public consumption within Section 1(b)s affirmative coverage. The Commission further found that Phillips' operations included the transportation of natural gas in interstate commerce.

"The single question, therefore." the Commission said in its opinion, "is whether such sales and such

transportation come within Section 1(b)s ban prohibiting application of the Act's provisions to 'production and gathering.'" And on that point, the Commission found that Phillips' such sales were part of the production and gathering process, or at least an exempt incident thereof.

But, in its decision, the Supreme Court said:

"We are of the opinion, however, that the finding [above referred to] is without adequate basis in law, and that production and gathering, in the sense that those terms are used in Section 1(b), end before the sales to Phillips occur."

And that, from a strict legal interpretation of the decision, decided the Phillips case. Counsel for petitioners proceed from that orthodox legal concept to the easy conclusion that the Phillips decision decides nothing that is controlling in this proceeding. If that conclusion were as realistically as it is technically sound, there would probably have been no Order No. 174, and, consequently, no uncertainty concerning the status of the petitioners.

In this proceeding no finding can be made that petitioners' operations include the transportation of natural gas in interstate commerce. Neither can it be found that production and gathering have been completed prior to the sales of natural gas by the petitioners. On the contrary, it can and must be found that the sale and delivery of the "gas well" and the "residue gas" (as the case may be) in each instance here under consideration, is made at, or in close

proximity to, the point at which production is completed; and it is made in every instance before the gathering process has been completed.

In this case, then, there is presented for the first time, and directly, the question whether a sale of natural gas made before the completion of production and gathering, (even though it were conceded that such sale were otherwise a sale in interstate commerce,) is exempt from the operation of the Natural Gas Act by reason of the exclusionary provisions of Section 1(b). The petitioners, while insisting that their sales of natural gas are not in fact sales in interstate commerce, contend that such sales are so exempt.

Petitioners contend that the language of the Court last above quoted, when construed against the Court's prior conclusion that sales of Phillips were made after the end of production and gathering should be taken to mean that the Act was intended to apply to such sales in interstate commerce as are made after the completion of those operations. It can, of course, be so construed, but it is not believed that it is properly confined to sales which come within that classification.

Immediately following the language of the Court, relating to Section 1(b) as above quoted, the Court, referring to certain of its earlier opinions, said:

"* * * we observed that the 'natural and clear meaning' of the phrase 'production or gathering of natural gas' is that it encompasses 'the producing properties and gathering facilities of a natural-gas

company'. Similarly * * * we stated that 'transportation and sale do not include production or gathering', and indicated that the 'production and gathering' exemption applies to the physical activities, facilities, and properties used in the production and gathering of natural gas". (Emphasis added.)

After quoting extensively from its decision in Interstate Natural Gas Company v. Federal Power Commission, 331 U.S. 682, including the statement made therein that "[e]xceptions to the primary grant of jurisdiction in section [1(b)] are to be strictly construed * * *", the Court went on to say:

"Petitioners attempt to distinguish the Interstate case on the grounds that the Interstate Company transported the gas in its pipelines after completion of gathering and before sale, and that the Interstate Company was affiliated with an interstate pipeline company and therefore subject to Commission jurisdiction in any event. This Court, however, refused to rely on such refinements and instead based its decision in Interstate on the broader ground that sales in interstate commece for resale by producers to interstate pipeline companies do not come within the 'production or gathering' exemption." (emphasis added.)

In support of his contention that sales of gas made before the completion of gathering are exempt from the Commission's regulation, counsel for one of the petitioners cites the decision of the United States Supreme Court which upheld the constitutional state minimum price order, (which order the Court said

was justified as a conservation measure) applying to sales of natural gas in interstate commerce [Cities Service Gas Company v. Peerless Oil & Gas Company, 340 U. S. 179 (1950); Phillips Petroleum v. Oklahoma, 340 U.S. 190. (1950)]. In those opinions, the Court held that the states are constitutionally competent to control production and gathering to the extent even of establishing a price at which casing-head gas must be sold at the well head.

In that connection, it should be pointed out that in its opinion in the Phillips case, in addition to the conclusion which it reached with respect to the single point in issue to which reference has been made, the Commission also found that the evidence therein supplied still another barrier to its regulation of Phillips' sales. The Commission expressly found that such sales were so closely connected with the local incidents of that process as to render rate regulation by the Commission inconsistent or a substantial interference with the exercise by the affected states of their regulatory functions. In that connection the Commission said:

"* * * To cite one example, there is a direct relation between price and conservation, an important concern in the regulation of each of the states. * * * our fixing of maximum rates for his sales would run counter to State conservation efforts, through the fixing of minimum well-head prices or otherwise * * *".

The record there showed, and the Commission found, that the representatives of several intervening producing states vigorously urged the want of juris-

diction in the Commission. The Supreme Court disposed of the problem there presented by saying:

"* * * The short answer to this contention is that the jurisdiction of the Federal Power Commission was not intended to vary from state to state, depending upon the degree of state regulation and state opposition to federal control. We expressly rejected any implication to the contrary in the Interstate case."

The Court also [11] rejected the suggestion that "production or gathering" should be construed to mean the "business" of production and gathering with the sale of the product considered as an integral part of such business.

Petitioners continue to find comfort in certain statements appearing in the legislative history of the Natural Gas Act which seemed to indicate a Congressional intent not to regulate rates charged for natural gas sold by producers and gatherers. Similar, and in some instances the same, passages were cited by the Commission in its opinion to manifest its interpretation of the provisions of Section 1(b) of the Act.

But the Court rejected the Commission's interpretation of the legislative history of the Act, and said:

"Rather, we believe, that the legislative history indicates a Congressional intent to give the Commission

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[11] The Court later said that the gap the Act was intended to fill was that which existed at the time the Act was passed and is not affected by subsequent decisions.

jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not whether occuring before, during or after transmission by an interstate pipeline company. There can be no dispute that the overriding Congressional purpose was to plug the 'gap' in regulation of natural-gas companies resulting from judicial decisions prohibiting, on federal constitutional grounds, state regulation of many of the interstate commerce aspects of the natural-gas business." (Emphasis added.)

Thus, it seems, there is no longer occasion for us to search the legislative history of the Act to determine the Congressional intent.

But, if one other than the most ingrained legal doctrinaire were still in doubt as to the actual breadth of this decision, it should be dispelled by the language of Justices Clark and Burton in their dissenting opinion. They said therein that:

"* * * Congress provided that the Act 'shall not apply * * * to the production or gathering of natural gas'. Language could not express a clearer command, but the majority renders this language almost entirely nugatory by holding that the rates charged by a wholly independent producer and gatherer may be regulated by the Federal Power Commission. Nor does the Court stop there, for in the sweep of the opinion 'the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during or after transmission by an interstate pipeline company' are covered under the Act. * * * On its face, this language

brings every gas operator, from the smallest producer to the largest pipeline, under federal regulatory control. * * *" (Emphasis added.)

"By today's decision, the Court restricts the phrase 'production and gathering' to 'the physical activities, facilities, and properties' used in production and gathering. * * *"

In consideration of the force which must be accorded these statements, even though they undoubtedly are in the strict sense of the word, dicta, there would seem to remain no doubt as to the effective law of that case on this question. It is concluded that the language "production or gathering of natural gas" as used in Section 1(b) of the Act encompasses only the producing properties and gathering facilities, and the exemption applies only to the physical activities, facilities, and properties used in such production and gathering. It does not exempt or exclude from the affirmative reach of this section sales of natural gas made during the course of production or gathering or as an indicent thereto, whether the sales are made after or before delivery to an interstate pipeline.

Sales of "Natural Gas".

Petitioners Shell and Humble contend that their sales as producers are sales of "casinghead gas" which is not the same product as the surplus residue gas which is, they say, the "natural gas unmixed" to which Congress referred in the definition of "natural gas" found in the Act. They further contend that by "natural gas unmixed" Congress meant nothing more nor less than natural gas immediately suitable for fuel for public consumption, in other words, as they

describe it, a gas consisting almost entirely of methane and ethane. But the basis for the contention is not entirely clear.

It is true that a witness for Shell testified that methane and ethane constitute the bulk of the gas in interstate transmission lines—fuel gas. He testified also that a requirement which must be met to make "natural gas" suitable for transmission in high pressure interstate transmission lines is that it be dehydrated. Another universal requirement is that the hydrogen sulphide be removed to small quantities. He testified also that:

"A third thing that may or may not be important, depending on the source of the gas, is the quantity of liquifiable hydrocarbons presented in the gas; if that quantity exceeds a reasonable limit, usually of the order of between a tenth and two-tenth of a gallon of gasoline, condensation will occur under the usual interstate transmission line conditions, and cause difficulties and restrict the flow of gas through the line, making it necessary to drain out the condensation and get rid of it in some manner."

If, however, we are to determine the intent of Congress in 1938 the evidence, it is believed, should relate to practices then pursued, and the understanding of the term as it was then used. There is no evidence in the record that interstate pipe lines were then operated at high pressure or that the gas then transmitted in interstate lines consisted almost entirely of ethane and methane. Nor would it be proper to assume that those were the facts.

I am unable to see any rational basis for the conclusion that Congress intended that regulation under the Natural Gas Act be confined to fuel gas consisting "almost entirely of methane and ethane". It is true that the gas which Phillips sells to El Paso is not casinghead gas, but there is certainly no evidence in this record that it is anything other than natural gas as that term is used in the Act.

It would seem to be beyond question that Congress had not in mind a gas of a particular chemical structure. Instead it viewed gas as being of two kinds—natural gas and artificial gas. It contemplated within the meaning of "natural gas" all gas which was not artificial.

Petitioners point to further testimony of Shell's witness in which he makes the statement that "[g]as is not salable as natural gas, per se, until the process of preparation for transmission has been completed." Obviously, however, the witness did not mean that the gas could not be sold and delivered to an interstate pipe line for the purpose of transportation and sale in interstate commerce before the steps which he described are taken. On the contrary he pointed to the gas sold by Shell from the McElroy Field, which he describes as "partially treated" gas, and to the fact that after it is sold by Phillips in one of the transactions which the Supreme Court, in the Phillips case, Supra., found to be a sale in interstate commerce, the two most important steps needed to make the gas suitable for transportation in high-pressure pipe lines is performed by the company to which Phillips sells the gas. It can no longer be disputed that when the gas is sold and delivered by Phillips to

El Paso it is delivered into the stream of interstate commerce. No one has argued, either, that the gas so delivered is not "natural gas".[12] Yet after the receipt thereof, El Paso treats the gas for removal of carbon dioxide, hydrogen sulphide, dehydrates it and raises the pressure to 550-600 pounds. Certainly it is then ready for transportation and it is then transported in a high-pressure interstate transmission line.

The witness gave another illustration of gas already moving in interstate commerce which is treated for the removal of carbon dioxide; an example of gas actually moving in interstate commerce before the completion of the preparation for transportation which in the words of the witness makes the gas salable as natural gas, per se.

Again in Michigan Wisconsin Pipe Line Company, v. Calvert, 347 U.S. 157 the Court notes that after the gas has been taken into the Michigan-Wisconsin pipes it flows a distance of approximately 1215 feet to a compressor station where it is compressed, cooled, scrubbed and dehydrated.

It should be noted too that the "gas" which Deep South sells to Texas Gas is defined in the contract of sale as "natural gas". The gas which it sells to United Gas Pipe Line Company is defined in that contract as "merchantable gas as produced in its natural state from the wells."

[12] In fact Shell's witness testified that the principal components of the gas produced on the McElroy lease are the same as the principal components of gas which is used by the ultimate customer.

As defined in the Statutes of the State of Texas "natural gas" and "gas" mean the same thing. "Casinghead gas" means gas and or vapor indigenous to an oil stratum and produced from such stratum with oil". Thus, it appears that in the contemplation of the Texas statutes casinghead gas and natural gas are the same.

When asked what the difference, if any, is between the properties of casinghead gas and gas well gas a Shell witness, who is an expert on the subject, replied:

"It is not possible to give a definite answer to that. Most gas well gas, so-called, contains some of these intermediate to heavy hydrocarbons. The north Texas Panhandle is a very good example. Over most of the area there, the gas has no association with oil at all, and yet contains somewhere around a third to a half a gallon of natural gasoline, and most of it contains a lot of propane, or bottled gas material, and butanes.

"If you set about to draw a line between the two types of production, two types of wells, you would say in general that casinghead gas, associated with oil, usually has a larger percentage of the liquifiable hydrocarbons than gas well gas, and that is about the end of it. That is the only distinction I know."

Later, along the same line, the witness repeated that there is no sharp line of distinction between so-called dry gas well gas and casinghead gas; that usually the latter has more liquifiable hydrocarbon components, but, he said, it is all natural gas.

No one contends, as indeed they could not, that the gas produced and sold by Shell, Humble and Deep South does not contain the ethane and methane, which the evidence shows, constitutes the bulk of the fuel gas distributed to domestic, commercial and industrial customers. The extraction process to which the gas is subjected, both before and after delivery is made to the interstate pipe line, does not create, or add to the constituents of the casinghead gas, any amount of either of those components. Those processes merely extract and remove from the casinghead gas stream, by simple changes in their physical environment, impurities such as carbon dioxide, nitrogen, helium, compounds of sulphur and oxygen, water and water vapor, drilling mud, rust, sand, dirt and in addition liquid hydrocarbons. Throughout all those changes the "natural gas" flows continuously and without interruption first with, and later without, those impurities and other components, through the interconnected pipe lines, including those which actually cross state boundaries, to the burner tips of the consumers thereof.

Thus, it must be concluded that for the purposes of regulation under the Natural Gas Act the gas sold by the several petitioners herein is "natural gas" within the meaning of that Act.

Sales for "Resale".

Petitioners contend that the sales of "casinghead gas" which they make are not "sales for resale" but for "manufacture".

The contract between International Petroleum Corporation and Phillips Petroleum Company (Standard

Form Revised—Natural Gasoline Association—1932) under which, by assignment, sales are made by Shell to Phillips, contains the following paragraph:

"Purpose—The gas hereby sold is conveyed to the Buyer for the purpose of manufacturing gasoline or such other product or products as may be manufactured at Buyer's Plant."

As pointed out by Shell, the evidence shows that on May 7, 1936 (the date of the execution of the contract), and for a number of years thereafter the residue gas from which heavier hydrocarbons had been extracted by Phillips, other than that used by Phillips for gasoline plant operation and by the Seller for the development and operations of seller's lease, was flared. In fact, it was not until July 17, 1950 that a market became available for the remainder of that residue gas. Phillips then began to make deliveries thereof to El Paso Natural Gas Company, an interstate natural-gas pipeline company. Since then, even though, as before, a part of the residue gas has been used by Phillips for gasoline plant operations, and a part has been used by Seller for the development and operations of its lease, most of it has been sold by Phillips to El Paso, and it has been, by the latter, transported and sold in interstate commerce.

The testimony is that after the delivery of the gas to Phillips, Shell has no more control over the gas or voice in its sale. The evidence does not show that Shell had anything to do with the sale by Phillips to El Paso of the residue gas. It should be noted, however, that the contract to which we have just referred contains the following provisions:

"It is agreed and understood by and between the parties hereto, that if and when the residue gas remaining after the extraction of gasoline from such casinghead gas shall be more than sufficient for the needs of the Buyer in the operation of said gasoline plant and more than sufficient for the needs and requirements of Seller for the development and operating purposes upon the premises from which the said casinghead gas is produced, then, and in that event, the Buyer shall have the right without the obligation to sell any or all surplus residue gas so remaining; provided that in the event of sale by the Buyer of any or all of such residue gas, Buyer shall pay to the Seller herein fifty percent of the net proceeds received from the sale of such gas, such payments to be made at the same time as other pay ments hereunder. Net proceeds as herein used is defined as the gross proceeds less any cost of boosting and/or transportation necessary to market such gas. * * *" (Emphasis supplied.)

In a later supplement to that contract, dated October 1, 1952 (which is, of course, after sales to El Paso began) there appears this statement:

"2. It is understood that the casinghead gas purchased under said Casinghead Contract (of May 7, 1936 referred to) is processed by Phillips in its Crane Natural Gasoline Plant and that * * *" (Underscoring added.)

The supplement goes on to provide for the payment by Phillips to Shell each month of the value of the amount of hydrogen sulphide contained in acid gas

removed by Phillips from the casinghead gas purchased from Shell.

Regardless of the words contained in the "Purpose" paragraph of the original contract, it is perfectly clear that the true purpose of the sale was to provide a market for the casinghead gas (including all component parts thereof) delivered by the Seller; that so far as Seller was concerned his primary purpose was to subject the casinghead gas to a process by means of which the components could be appropriately extracted. The manufacture of natural gasoline from components of the casinghead gas was one of such means, and at the time apparently the only means. Consequently, the price to be paid for the residue gas was directly related to the revenue to be derived from the gasoline which was to be manufactured from the components extracted in pursuit of that purpose. Furthermore, even though there was not then a market for the residue gas, the possibility of such an eventuality was not overlooked and provision therefor was made. And Seller's claim to part of the proceeds from the sale of elements other than natural gasoline and residue gas extracted from the commingled gas is also recognized. It seems clear, therefore, that the purpose of the sale of gas by the original Seller was not in any sense intended as a limitation or restriction to use for purposes of "manufacture". Furthermore, to say that after the sale and delivery of the gas by Shell to Phillips the former no longer has any control over it, appears, in the light of all of the provisions of the contracts and its supplements, to be not without some doubt.

It seems appropriate, also, to point out that the original contract provided that:

"Term—Either party shall have the right to terminate this contract at the expiration of five years from the date thereof or on any anniversary of said date thereafter by giving the other party thirty (30) days notice, in writing, of its intention to do so. * * *".

It must be assumed that Shell has been aware of the sales of residue gas by Phillips to El Paso on every anniversary of the date of the contract since the beginning of such deliveries on July 17, 1950, and by continuing rather than terminating the contract, it has tacitly, at least, joined in such sale.

In any event the determination of the question whether the gas is sold for manufacture must rest upon the actual disposition of the gas today rather than upon the now anomalous provision of a contract entered into under wholly different conditions.

As we have seen, 36 of the 48 contracts for the sale of casinghead gas by Humble to others are on the same form as that described above, namely Standard Form Revised—Natural Gasoline Association—1932 contracts, and contain identical "purpose" clauses. Those contracts also contain the clause quoted above which retains in the seller the right to demand and receive 50% of the net proceeds from the sale by Buyer of all residue gas remaining after the extraction of the other components of the casinghead gas.

The 1939 form on which 8 of the contracts are written do not contain a similar "purpose" clause. Instead, the relevant provision states:

"Transfer of Title—Upon receipt of said casinghead gas by Buyer, title thereto shall pass to and vest in Buyer at the delivery place described herein without regard to the purpose for which said casinghead gas may thereafter be used by Buyer." (Emphasis added.)

Since the principal business of the Buyer under those contracts namely, El Paso, is the purchase, transmission and sale in interstate commerce of natural gas, there is no provision in them for the resale to others of such gas.

There is no limitation, either, upon the use of the gas sold under the Division orders, but they clearly contemplate the extraction from the casinghead gas of the various components in such a way as to make possible the most advantageous marketing of the gas, and of the components, by the Seller and the Buyer. Thus, in those instances, the Seller is compensated for the casinghead gas on the basis of the value which the Buyer realizes from the several components of the casinghead gas after the extraction has occurred. Here again, even though the contract recites that the title passes upon delivery, and even though Seller does not participate in the choice of the one to whom the residue gas is sold, the Buyer might conceivably, for some purposes, be considered as the consignee of the casinghead gas and its component parts, responsible to the Seller for an accounting with respect thereto.

The 1932 and 1939 contracts contain clauses which contemplate fixed terms with the privilege of cancellation on anniversary dates thereafter. Sales under division order are cancellable at the will of the owners of interests in the properties. The purpose of the sale under those orders appears to be no different than those under the contracts described above.

Neither the contract under which Deep South sells gas to Texas Gas nor the contract under which it sells gas to United contains a "purpose" clause. In the former "gas" is defined as "natural gas of merchantable quality, commercially free of solids, dust, liquid water and hydrates and shall not contain more than 40 grains of sulphur per mcf." This contract provides for two price components, one for the separator overhead gas and the other for crude oil removed by the separator. The first component is the equivalent of the average of the three highest prices for gas (excluding gas condensate and other liquifiable hydrocarbons) paid to producers in that Railroad Commission District.

In the contract with United, the gas to be delivered must "(b)e merchantable gas as produced in its natural state from wells free of any objectionable liquids and solids except that Seller shall separate or cause to be separated, any liquid hydrocarbons. Seller may extract, or cause to be extracted, any natural gasoline and other liquifiable hydrocarbons which may be produced with or as a part of such gas, provided that by such separation or extraction

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the heating, the heating value of the gas shall not be reduced to less than 950 gross British Thermal Units per cubic foot, * * *. In extracting the natural gaso-

line and separating the liquid hydrocarbons or condensable hydrocarbons from the gas to be delivered hereunder, Seller agrees that it will not subject or permit said gas to be subjected to any treatment in such extraction or separation processes which will change the chemical composition of any of the component parts of said gas, * * *" (Emphasis added.)

It seems clear that under both of those contracts, Deep South does nothing more nor less than sell the gas which it produces. It is not concerned with what, if any, "processing" or "manufacture" may take place after it sells and delivers its gas. Neither is it concerned, so far as the contracts disclose, with to whom the residue gas or any of the components of the casinghead gas which it sells to Texas Gas and United may be resold. It must be aware that those purchasers of casinghead gas will, in turn, resell the residue gas, and the components thereof, and that they will resell such residue gas to others for domestic, commercial, industrial or other uses.

With respect to the gas produced by Shell in the Nome field the sale is made by Shell in the field in close proximity to the producing well or wells. However, the sale and the delivery are made to a company which owns and operates (or will in the immediate future own and operate) pipeline facilities which transport natural gas across a state line and by means of which such natural gas is transmitted in interstate commerce.

Nevertheless, the pipeline into which Shell makes deliveries is a "gathering" line as that term is used in the industry, and from that line the gas flows into

facilities of a similar nature which are owned, in contemplation of law, by a different corporation. After passing through the latter's facilities the gas is redelivered to Pipeline Company into the interstate facilities above referred to.

Since Pipeline Company is wholly owned by Texas Gas, for the purposes of determining the jurisdiction of the Commission over the sales of natural gas the difference in corporate ownership of facilities may be disregarded. Thus, the practical interpretation of this transaction is that Shell sells this gas to an operator who removes such impurities as remain in the gas (including liquid hydrocarbons in the full stream gas), processes it by dehydration and compression, transports it in interstate commerce and resells it in interstate commerce to another pipeline which subsequently itself resells it to local distribution companies.

In connection with the contention that these sales of gas are for "manufacture" and not in interstate commerce and therefore not subject to the jurisdiction of the Commission under the Act it is appropriate to note the words of the Supreme Court in Mandeville Island Farms, Inc., et al., v. American Crystal Sugar Company, 334 U.S. 219 (1948):

"* * * The artificial and mechanical separation of 'production' and 'manufacturing' from 'commerce' without regard to their economic continuity, the effects of the former two upon the latter, and the varying methods by which the several processes are organized, related and carried on in different indus-

tries, or indeed within a single industry, no longer suffices to put either production or manufacturing and refining processes beyond the reach of Congress or of the statute".

It is concluded that the sales of gas, including casinghead gas, by the petitioners herein are sales in interstate commerce for resale, or such other purpose as the purchaser may choose. Actually the purchaser chooses in each instance to remove from the gas certain components from which the purchaser manufactures natural gasoline and other products. However, nothing is manufactured from the residue gas and it is resold in interstate commerce.

Sales in Interstate Commerce.

While petitioners appear to concede that Congress has ample power to regulate and control transactions in interstate commerce and can also exercise such regulation and control over activities which may "affect", or become a "burden" upon such commerce, they contend that Congress did not choose to so extend the regulatory function of the Commission under the Natural Gas Act. They contend that the language of the Act specifically limits such regulation to "the sale in interstate commerce", and expressly makes it inapplicable "to any other sale".

"Any other sale" under petitioners' interpretation of the language appears to mean any sale prior to and other than the sale which results directly in the delivery of the natural gas into the pipeline of the

interstate transmission line.[13] Based upon that interpretation of the Act, petitioners contend that in order for their sales to be subject to the regulation of the Commission they must be found to be made directly into the stream of interstate commerce; and, that consequently, a sale made prior to such ultimate sale and delivery into the interstate pipeline, even through one of a series of sales which eventuate therein, is not subject to the Commission's jurisdiction.

The evidence shows conclusively that the sales and deliveries of natural gas by each of the petitioners is made on or close to the lease on which that gas is produced; in close proximity to the end of the well-flow lines, and before the gathering operation is completed; and that thereafter, the producer of the gas had no further ownership or control over it. It shows further that gathering operations have not been completed until the gas reaches, in each instance, the processing plant.

The evidence shows, also, that with respect to the sales and deliveries of gas by Deep South from the Refugio lease, the sales and dliveries by Shell from the McElroy field, and all of the sales by Humble in connection with which Humble presented evidence herein, there is a constant uninterrupted flow of gas from the well head through the flow lines, the separators, the gathering lines where the gas is commingled with gas from other producers, the gasoline plants, the compressing, dehydrating and desulphur-

[13] That contention would seem to produce the same result as the earlier one that the Phillips decision does not go beyond that single, narrow point.

izing equipment, into interstate transmission lines. Aside from impurities and so much of such gas as is removed from the stream in those plants in the form of heavier hydrocarbons, all of the gas produced by petitioners in those areas follows such a course.

The characteristics of the sales and deliveries of gas by Deep South to Texas Gas, and the sales by Shell to Pipe Line are, or will be, identical with the others just described except that in those instances after the commingled gas leaves the plant, substantial quantities thereof are sold locally and consumed within the State of Texas, and except, also, that all of the commingled gas is not the property of the plant operator but some of it, theoretically, is returned to the owner after processing. The evidence shows that if they have not already begun, there will begin in the very near future the sale and delivery by Texas Gas to Pipe Line Company of substantial volumes of gas processed at the plant, including the gas produced by Deep South and Shell, which gas will thereafter move in interstate commerce and will be sold for resale therein. The gas thus produced by Deep South and by Shell, therefore, flows in a continuous and uninterrupted stream from the point of production in the State of Texas to the point of consumption in another State.

It should also be said that evidence respecting the transportation and sale of specific quantities of the gas sold by Shell to Phillips, by Deep South to United, and by Humble to its several purchasers does not appear from the record. Perhaps in the usual case, it would be desirable and, in fact necessary,

that more evidence on that point be required. However, it is clear that from the mass of gas with which the gas of those sellers is commingled soon after passing the delivery point, substantial volumes, which must include portions of that produced by those sellers, are transported in interstate commerce for resale.

In these proceedings the petitioners have asked for an interpretation of their status which interpretation would, they expect, exclude them from the Commission's jurisdiction. It seems to me that in such case the burden in each instance should be upon the petitioner to prove that he does not come within the purview of the Act rather than upon the Staff to prove that he does. It is recognized that the evidence upon which conclusive findings on those points could be made was not readily available to petitioners. That, however, would not relieve petitioners of the responsibility of exhausting such means as were at their command to reveal the relevant facts. Under the circumstances it must be concluded that in such a proceeding as this is, as distinguished from the usual one, inferences least favorable to the petitioners must be drawn from the evidence in the record on certain points.

In support of the contention that the sales made by petitioners are not sales in "interstate" but in "intrastate" commerce and that they are not therefore subject to the jurisdiction of the Commission, counsel for petitioners cite a large number of cases ranging in point of chronology from Coe v. Errol, 116 U.S. 517 (1886) to Michigan-Wisconsin Pipe Line Company v. Calvert, 347 U.S. 157 (1954). The Examiner has read and carefully considered all of those

cases, but has not found any of them helpful in the solution of the problem with which we are here confronted.

Without important exception all of the cases cited involve a determination of the power of the state with respect to regulation and taxation and turn upon the rationalization by the Supreme Court of the point to which a state may, but beyond which it may not, go in the licensing of activities within its borders and the taxing of properties lying, therein which licensing and taxing have a relationship to interstate commerce. To illustrate the absence of analogy there are set out below quotations from two of the more recent of the cases cited.

In Richfield Oil Corporation v. State Board of Equalization. 329 U.S. 69, 75-76 (1946). the Court said:

"It is well established that the Commerce Clause is a limitation upon the power of the states even in the absence of action by Congress * * *. But the scope of the limitation has been determined by the Court in an effort to maintain an area of trade free from state interference and at the same time to make interstate commerce pay its way. * * *. As recently stated * * * the law under the Commerce Clause has been fashioned by the Court in an effort 'to reconcile competing constitutional demands, that Commerce between the state shall not be unduly impeded by state action, and that the power to lay taxes for the support of state government shall not be unduly curtailed. That accommodation has been made by upholding taxes designed to make interstate commerce bear a

fair share of the cost of the local government from which it receives benefits * * * and by invalidating those which discriminate against interstate commerce which impose a levy for the privilege of doing it, which place an undue burden on it."

To the same effect in the more recent case of Michigan-Wisconsin v. Calvert, Supra, the Court said:

"* * * Numerous cases have upheld state levies where it is thought that the tax does not operate to discriminate against commerce or unduly burden it either directly or by the possibility of multiple taxation resulting from other taxes of the same sort being imposed by other states. The recurring problem is to resolve a conflict between the Constitution's mandate that trade between the states be permitted to flow freely without unnecessary obstruction from any source, and the State's rightful desire that interstate business bear its proper share of the costs of local government in return for benefits received. Some have thought that the wisest course would be for this Court to uphold all state taxes not patently discriminatory, and wait for Congress to adjust conflicts when and as it wishes. But this view has not prevailed, and the Court has therefore, been forced to decide in many varied factual situations whether the application of a given state tax to a given aspect of interstate activity violates the Commerce Clause * * *".

The cases thus cited by the petitioners simply reflect the practical operation of our peculiar form of government coordinating the action of two sovereignties, the more powerful in the area benevolently yield-

ing to the lesser to the extent necessary to allow the latter to meet the pragmatic demands upon it, yet jealously guarding its own and more widespread interests from unreasonable discrimination and undue burden.

But in every one of the cases cited there had been action by the State and the proceedings, in each instance, were to determine whether the State had gone further than it should have in the exercise of its authority to tax or regulate. No situation analogous to that is present in this proceeding. The evidence here shows that regulations prescribed pursuant to the laws of the State of Texas require authorization to drill oil and gas wells, the filing of monthly and special reports covering operations, the taking of different tests, including bottom hole pressures; and those regulations impose limitations upon the amount of oil and gas which is produced, and certain limitations as to the spacing of wells. The laws of the State also require the payment of a severance tax on distillate and gas. Although there is no evidence on the point, it is assumed that local authority also levies adalorem taxes upon the properties and facilities of the producers of gas and oil. But, so far as the evidence discloses, the taxes and regulations thus enumerated are the only ones imposed upon petitioners as producers and gatherers of natural gas by the State or other local authority. There is no evidence that the State levies a license tax upon the production or the gathering of gas or oil even though it undoubtedly could do so if it saw fit. Neither is there evidence that the State of Texas imposes minimum price regulations at the well head of the wells in the State producing gas.

The Federal Power Commission has never, of course, undertaken to regulate or tax the physical activities, facilities or properties used in the production and gathering of natural gas. Consequently, there is not in this record any evidence of conflict or duplication of regulation as between the State of Texas and the United States, nor is there any attempt on the part of the State to impose taxation or other burden upon commerce in connection with the production, gathering or sale of natural gas. Neither the State of Texas nor the regulatory agency of that State indicated interest in the proceeding or any thought that its authority would be impinged upon. So far as this record is concerned, in the absence of regulation by this Commission, the price of natural gas would be unregulated. The question whether, if the State of Texas had fixed a well head price for gas in these fields as was fixed by the Oklahoma Commission (Peerless case, supra,) recognition would have to be given to such regulation in determining the jurisdiction of the Commission herein is not presented in this proceeding.

As pointed out by counsel for the petitioners, interstate commerce is an intensely practical concept drawn from the normal and accepted course of business. With counsel we must agree, too, that we must accordingly mark the beginning and end of a particular kind of interstate commerce by its own practical considerations.

Relative to the question here in issue, it appears pertinent to quote the language of the Supreme Court in Mandeville Island Farms, Inc., v. American Crystal Sugar Co., supra:

"The Shreveport doctrine cut Congress loose from the haltering labels of 'production' and 'manufacturing' and gave it rein to reach those processes when they were used to defy its purposes regarding interstate trade and commerce. In doing so the decision substituted judgment as to practical impeding effects upon the commerce for rubrics concerning the boundaries, as the basic criterion of effective congressional action."

And what the Congressional purposes were regarding interstate trade and commerce in the enactment of the Natural Gas Act seem distinctly to appear from further language of the Court in the Phillips case, supra., as follows:

"Regulation of the sales in interstate commerce for resale made by a so-called independent natural-gas producer is not essentially different from regulation of such sales when made by an affiliate of an interstate pipeline company. In both cases, the rates charged may have a direct and substantial effect on the price paid by the ultimate consumers. Protection of consumers against exploitation at the hands of natural-gas companies was the primary aim of the Natural Gas Act. * * * Attempts to weaken this protection by amendatory legislation exempting independent natural-gas producers from federal regulation have repeatedly failed and we refuse to achieve the same result by a strained intertretation of the existing statutory language."

By that language [14] the Supreme Court made it crystal clear that the overriding consideration motivating Congress in the passage of the Act was the

[14] and that heretofore quoted at page 32, supra.

protection of gas consumers from exploitation. Construing the provisions of the Natural Gas Act so as to protect the ultimate consumer of natural gas from exploitation as contemplated by Congress and for that purpose to fill the "gap" between state and Federal regulation, it must be concluded that no conceivably useful purpose would be served by determining a point at which, under other circumstances and for other purposes "production" and "manufacturing" might end. "Interstate commerce" as the term is used in the Act is, at least, coextensive with the "gap" to which the Court referred.

It must be concluded, therefore, that in those instances in which a state or state commission exercises no control, regulation or limitation upon or over the price of gas at the well head, a sale of gas produced therefrom which results in the delivery thereof into a stream of commerce in which gas produced at a point in one state is transported and sold at a point outside thereof is a sale in interstate commerce of natural gas for resale within the meaning of the Natural Gas Act, whether, before, or after, such sale there shall be extracted therefrom liquid hydrocarbons and impurities, and whether such gas shall have been dehydrated, compressed or otherwise similarly processed.

Having reached that conclusion it is unnecessary to labor the contention of the petitioner Humble that another characteristic of its sales which distinguishes them from interstate sales is petitioners lack of knowledge as to purchasers intended disposition of either the "products" or the residue gas. We are not here concerned in any way with the products.

The evidence in this record respecting the redisposition of residue gas by those to whom Humble sells and delivers casinghead gas is quite sketchy and inconclusive. It is based, in fact, upon information furnished Humble's witness by casinghead gas plant operators in response to inquiries as to whether or not such plants were selling residue gas to pipelines "[t]hat moved the gas finally into interstate commerce, or across the State line." The cases represented by the 44 contracts and 4 division orders were determined so to be. Thus, if another of the parties were charged with the burden of proving the interstate nature of the movement of such gas after its sale and delivery by Humble, some question might arise as to the adequacy of the proof. However, it is not believed that anyone else has that burden. This is an instance in which it appears appropriate to derive from the evidence inferences least favorable to Humble.

With the possible exception of the sales to El Paso [15], there is no evidence that either at the time the contracts were excuted or since, Humble has had more than an indifferent knowledge of the purchaser's contemplated disposition of the residue gas. The residue gas may be returned to the lease, used in plant operation, sold to local markets, or, in some cases, sold to interstate pipeline companies.

In support of his position counsel, says that "where disputed sales or operations have been held to be interstate, Courts have stressed this consideration." No cases sustaining the converse are cited. Superior Oil Co. v. Mississippi, 280 U.S. 390, also cited, is

[15] There appears to be no serious question as to the character of this movement.

not helpful. But it is not believed that one who sells and delivers gas into an interstate stream of commerce can alter or otherwise affect the nature of that flow by pleading indifference to, or indifferent knowledge of, the destination thereof, nor can he avoid, thereby, the regulation and control of so much of that stream as is contributed by him.

For the purpose of removing uncertainty with respect to the status of the sales of gas by Humble as shown in the evidence herein, such sales are found to be sales in interstate commerce of natural gas for resale.

A similar conclusion must be reached with respect to Shell's sales from the McElroy Field [16] and Deep South's sales from the Refugio Field.[17]

However, a further point is raised by Deep South with respect to gas which it sells to Texas Gas.

We have seen that gas produced by Deep South in the Big Hill area and by Shell in the Nome Field is (or will be) commingled with gas purchased by Texas Gas from many other producers. Furthermore, all of the gas which flows through the Winnie Plant is not owned by Texas Gas. Some of it is merely processed by the plant, the owner apparently retaining title to it. Quantities of residue gas equivalent to the volume to which he is entitled is returned to that owner. Large percentages of residue gas taken from the mass of such gas emerging from the plant are used

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[16] All of the residue of which appears to be sold and delivered to El Paso.

[17] Inferred from the evidence as explained above.

and consumed locally. Thus it is impossible to demonstrate uniquely that any particular molecules of gas produced by Deep South in the Big Hill area or by Shell in the Nome Field actually and physically flow across state lines and are sold thereafter.

But under such circumstances it is not believed necessary that there be proved that the gas of these producers is the gas which is transported and sold in interstate commerce. To so require would make it possible to avoid with ease the regulation of such sales for resale. Federal jurisdiction is not believed to rest on so tenuous a foundation.[18]

It is concluded, therefore, that the sales of gas here under consideration, and each of them, made by the petitioners herein, respectively, are sales in interstate commerce of natural gas for resale within the purview of the Natural Gas Act. Consequently, it is concluded that the petitioners, and each of them is engaged in the sale in interstate commerce of natural gas for resale, and is, therefore, a natural-gas company within the meaning of the Act. The prayer of such petitioners respectively for an order declaring that its such sales are not subject to regulation under the provisions of the Natural Gas Act and that the petitioners, respectively, are not natural-gas companies within the meaning of the Act by reason of such sales, must be and is, therefore, denied.

EDWARD B. MARSH,
(Edward B. Marsh),
Presiding Examiner.

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[18] cf. Jersey Central Power and Light Co. v. Federal Power Commission, 319, U.S. 61.

Filed: April 4, 1955.

Issued: Apr. 5, 1955.

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EXCEPTIONS TO DECISION OF PRESIDING EXAMINER & BRIEF OF HUMBLE OIL & REFINING COMPANY IN SUPPORT OF EXCEPTIONS.

Received May 23 4:51 PM '55, Federal Power Commission.

United States of America, Federal Power Commission

In the Matters of:
Deep South Oil Company of Texas, Shell Oil Company, Humble Oil & Refining Company.

Docket No. G-2952, Docket No. G-4671, Docket No. G-5261.

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May 25, 1955.

Pursuant to Section 1.31 of the Rules of Practice and Procedure of the Commission, Humble Oil & Refining Company (Humble) excepts to and appeals from the Decision, issued on April 5, 1955, by Presiding Examiner Edward B. Marsh. In its Petition for Declaratory Order, filed herein on November 26, 1954, and in its Brief, filed herein with the Presiding Examiner and dated February 9, 1955, Humble urged four separate grounds in support of its position. In declining to adopt this position in his Decision issued herein on April 5, 1955, the Presiding Examiner specifically rejected each and all of the aforesaid four separate grounds. Accordingly, Humble excepts to and appeals from said Decision in its entirety and to each and every finding and conclusion therein which is contra any one of the aforesaid four separate grounds. Among such findings and conclusions, Humble excepts to and appeals from each of the following, together with each and every statement of Presiding Examiner which may be read as subsidiary to and in support thereof:

Exception I.

A. Humble excepts to the following, appearing on page 134 of the Decision:

"The Issues.

As has been indicated, the issues herein with respect to Deep South, Shell and Humble are whether the sales of natural gas as described in each of their several petitions are sales in interstate commerce of natural gas for resale and therefore subject to the provisions of the Natural Gas Act; and whether the

petitioner in each instance is a 'natural-gas company' within the meaning of the Act."

B. The issues here involved are set forth by Humble on pages 14 and 15 of its brief submitted to the Examiner in support of its petition, and are also set forth on pages 26, 27, et seq., of the Decision where these same points, although arranged in different numerical order, are discussed and passed upon.

C. In lieu of the above quotation, Humble proposes the following:

"The Issues.

The issues with respect to each of the sales of petitioners, here involved, are as follows:

1. Whether the sales and all facilities used in consummating them are a part of production and gathering and, therefore, exempt from the Commission's jurisdiction under Section 1(b) of the Act.

2. Whether the sales are not sales 'of natural gas,' but of casinghead gas, which is not the same product as the surplus residue gas sold by the plant operator after the intervention of processing.

3. Whether the sales are not 'for resale,' but are sales for processing.

4. Whether the sales are not 'in interstate commerce.' "

Exception II.

A. Humble excepts to the following, appearing on the indicated pages of the Decision, and in particular to the underscored portions thereof:

"As has been indicated, the issues herein with respect to Deep South, Shell and Humble are whether the sales of natural gas as described in each of their several petitions are sales in interstate commerce of natural gas for resale * * *" (p.4).

"The sales of natural gas by each of the several petitioners are physically unrelated to each other" (p. 4).

"In order to make a determination of the issues involved, it is necessary, therefore, to review the evidence relating to the several petitioners, and the sales of natural gas by each of them, as it appears in the record of the proceedings" (p. 5).

"The petitioners, while insisting that their sales of natural gas are not in fact sales in interstate commerce, contend that such sales are so exempt" (p. 29).

B. Each of the foregoing quotations reflects on its face a failure by the Examiner to consider one of the main contentions advanced by all petitioners, that is, that the sales involved are not sales "of natural gas" but are sales of unprocessed casinghead gas which is not suitable for resale for ultimate public consumption, as is the case with the surplus residue gas sold

by the plant operator after the intervention of processing. The foregoing quotations reflect the Examiner's assumption from the outset that petitioners' sales are sales "of natural gas." It would thus appear that he has decided against petitioners one of the four main issues before even discussing his view of the merits of this claim by petitioners (pp. 33-38).

C. In addition to the restatement of the issues in the manner proposed under Exception I hereinabove, Humble proposes that the last three of the four sentences quoted immediately above be modified by deleting therefrom the underscored words, "of natural gas."

Exception III.

A. Humble excepts to the following, standing alone, appearing on the indicated pages of the Decision:

1. "Humble makes four sales of casinghead gas (one to Phillips Petroleum Company, two to the Texas Company, and one to Stanolind Oil and Gas Company), in the Stowell and Hastings fields in Texas, under what is described as 'Division Orders'" (p. 23).

2. "A 'Gas Division Order' is used for the purpose of showing the division of ownership both as to the working and the royalty interests and of giving to the operator the right to purchase the gas and to use it or sell it to someone else for the account of the joint owners. Under such an order the operator can

sell and deliver the casinghead gas to a purchaser for the account of the other joint owners of interest.[9]

3. "Casinghead gas sold by Hunble under those contracts and orders moves from the wellhead through flow lines and other equipment similar to that through which gas produced by Deep South and Shell moves" (p. 24).

4. "There is no limitation, either, upon the use of the gas sold under the Division Orders, but they clearly contemplate the extraction from the casinghead gas of the various components in such a way as to make possible the most advantageous marketing of the gas, and of the components, by the Seller and the Buyer" (p. 43).

5. "Sales under division order are cancellable at the will of the owners of interests in the properties. The purpose of the sale under these orders appears to be no different than those under the contracts described above" (p. 43).

B. The above quotations standing alone fail to take into account the fact that, prior to issuance of the Decision of the Presiding Examiner, the Commission had twice decided that Humble is not required or permitted to secure a certificate of public convenience and necessity or to file a rate schedule with respect to each of the four "Gas Division Orders" to which the remarks of the Examiner quoted above

[9] Apparently the only significant difference between the contract and the order is that the latter is subject to revocation at the will of the joint owners" (p. 24).

referred. See the Commission's order issued on March 10, 1955, at Docket Nos. G-6753, et al., In the Matter of Humble Oil & Refining Company. By its action of March 10, 1955, the Commission necessarily concluded that Humble is engaged in no jurisdictional activity in relation to any of the four "Gas Division Orders" referred to by the Examiner, for otherwise Section 7 of the Natural Gas Act would require that Humble file applications for certificates of public convenience and necessity, and Section 4 would require that Humble file companion rate schedules.

C. Humble proposes that the following be inserted after the second paragraph on page 43 of the Decision:

"In regard to these sales reference is made to Docket Nos. G-6758, G-6759, G-6760, and G-6761. With respect to operations under these 'Gas Division Orders,' the Commission in these dockets has recently held that Humble is engaged in no jurisdictional operations under the Natural Gas Act when it concluded that Humble is neither required nor permitted to secure a certificate of public convenience and necessity or to file a rate schedule in respect of operations under such division orders. See Order issued by the Commission on March 10, 1955, at Docket Nos. G-6753, et al., In the Matter of Humble Oil & Refining Company."

With the addition of the above paragraph Humble would have no objection to items 1, 2, 3, 4 and 5 quoted above.

Exception IV.

A. Humble excepts to the following, appearing on page 33 of the Decision:

"It is concluded that the language 'production or gathering of natural gas' as used in Section 1(b) of the Act encompasses only the producing properties and gathering facilities, and the exemption applies only to the physical activities, facilities, and properties used in such production and gathering. It does not exempt or exclude from the affirmative reach of this section sales of natural gas made during the course of production or gathering or as an indicent (sic) thereto, whether the sales are made after or before delivery to an interstate pipeline."

B. The statute and authorities relied upon are Section 1(b) of the Natural Gas Act and the decision of the Supreme Court of the United States in Phillips Petroleum Company v. Wisconsin, et al., 374 U.S. 672, and Natural Gas Pipeline Co. of America v. Panoma Corp., Natural Gas Pipeline Co. of America v. Corp. Commission of Oklahoma, decided April 11, 1955, ... U.S. .....

C. In lieu of the above quotation, Humble proposes the following:

"Humble's casinghead gas sales are a part of 'production as that term is used in Section 1(b) of the Act, and, under the clear language of the statute, such sales are exempt from the Commission's jurisdiction."

Exception V.

A. Humble excepts in its entirety to that portion of the Decision under the heading "Sales of 'Natural Gas' ", appearing on pages 33-38, both inclusive.

B. In support of this exception, Humble relies upon Sections 1(b) and 2(5) of the Natural Gas Act, and also upon pages 374-399 of the transcript, together with Exhibit Nos. 23 and 24. Humble submits that the portion of the Decision referred to immediately above reflects a misunderstanding by the Examiner of the contention urged by Humble. Thus, from the outset, he discusses this contention in terms of a claim that Congress was referring to "surplus residue gas" when it used the term "natural gas unmixed." We do say that casinghead gas is not the same product as "surplus residue gas" sold by the plant operator after the intervention of processing. But our contention is that unprocessed casinghead gas is not "natural gas" within the contemplation of the Act since casinghead gas is clearly not the merchantable commodity suitable "for resale for ultimate public consumption." Necessarily, it was this commodity to which Congress confined the provisions of the Act, as a mere glance at Section 1(b) will suffice to establish. For the language there employed plainly restricts the applicability of the provisions of the Act to interstate sales of natural gas "for resale for ultimate public consumption."

C. In lieu of that portion of the Decision referred to above, Humble proposes the following:

"The record in this case demonstrates that casinghead gas contains numerous components such as carbon dioxide, nitrogen, helium, water vapor, free water, drilling mud, rust, sand dirt and various sulphur components. Normally casinghead gas also contains valuable liquefiable constituents such as ethane, propane, butanes, pentanes, and heavier components, including natural gasoline, which it is desirable to remove for their value and which must be removed to permit use of the residue gas. The commodity sold under the casinghead gas contracts here involved is the total of all of these constituents, of which methane, the principal constituent of natural gas, is only one. Such casinghead gas is not suitable for use for domestic or industrial fuel, it being necessary to remove the impurities and extract the liquefiable components before a product, residue gas, is obtained which can be made suitable for such use.

"It is the merchantable commodity suitable for domestic and industrial use to which Congress necessarily referred when it employed the term 'natural gas.' With respect to sales, by Section 1(b) Congress restricted the applicability of the provisions of the Act to interstate sales of natural gas 'for resale for ultimate public consumption.' Thus, the provisions of the Act can apply only to the merchantable commodity suitable for ultimate public consumption.

"It is true that the constituent chemical elements of merchantable natural gas suitable for ultimate public consumption are contained in the unprocessed casinghead gas here involved. Likewise, those same elements are contained in the mixture of oil and

casinghead gas in which such unprocessed casinghead gas is inevitably produced. The provisions of the Act can no more apply to unprocessed casinghead gas than it could apply to such a mixture of oil and casinghead gas. Clearly, in providing for regulation of the sales of natural gas suitable for ultimate public consumption, Congress did not intend to provide for regulation of sales of mixtures of such gas with the other components found in the casinghead gas here involved, or indeed with the oil itself. The Commission must refuse to assert jurisdiction over the sales of casinghead gas here involved, just as logically as it must refuse to assert jurisdiction over sale of the usual mixtures of oil and casinghead gas.

"Accordingly, it is concluded that the term 'natural gas' as used in the Act is confined to unmixed natural gas suitable for ultimate public consumption or any mixture of such gas and artificial gas. Sections 1(b) and 2(5). Jurisdiction under the Act does not extend to mixtures of such natural gas the the other constituents found in the casinghead gas here involved, or to mixtures of oil and casinghead gas."

Exception VI.

A. Humble excepts to the following finding and conclusion of fact set forth on pages 38 and 48 of the Decision:

"Throughout all those changes the 'natural gas' flows continuously and without interruption, first with and later without, those impurities and other components, through the interconnected pipe lines, includ-

ing those which actually cross state boundaries, to the burner tips of the consumers thereof" (p. 38).

"The evidence shows, also, that with respect to the sales and deliveries of gas by Deep South from the Refugio lease, the sales and deliveries by Shell from McElroy field, and all of the sales by Humble in connection with which Humble presented evidence herein, there is a constant uninterrupted flow of gas from the well head through the flow lines, the separators, the gathering lines where the gas is commingled with gas from other producers, the gasoline plants, the compressing, dehydrating and desulphurizing equipment, into interstate transmission lines. Aside from impurities and so much of such gas as is removed from the stream in those plants in the form of heavier hydrocarbons, all of the gas produced by petitioners in those areas follows such a course" (p. 48).

B. In support of this exception Humble relies upon pages 379-399 of the transcript and exhibits 23 and 24 thereto. The record clearly shows interruption of the so-called continuous flow of gas by (1) a sale primarily for gasoline manufacture, (2) to a purchaser over which the Seller has no control whatever as to disposition of the gas or liquids, and (3) a complex and costly plant operation which converts a raw material into a finished, manufactured product.

C. In lieu of such finding and conclusion Humble proposes the following:

'After the casinghead gas produced by Humble has been sold, it is gathered, along with casinghead gas

of other producers, by a plant operator into his processing plant. Here, an interruption of movement occurs wherein the impurities and foreign matter are removed. Here also the valuable liquefiable hydrocarbons are extracted. As a raw product, casinghead gas is fashioned by this processing into a change of form to enable the use of its components. Such processing is manufacturing. After processing, the plant owner alone controls and determines the disposition to be made of the residue gas. Until he does so, the residue gas is not irretrievably committed to its intrastate or interstate market, as the case may be. So far as the producers are concerned, the plant operator is free at any time to change his decision respecting the disposition to be made of the residue gas. Humble's sales under each such casinghead gas contract are sales made in intrastate commerce, not in interstate commerce.

Exception VII.

A. Humble excepts to the following, appearing at page 42 of the Decision:

"In any event the determination of the question whether the gas is sold for manufacture must rest upon the actual disposition of the gas today rather than upon the now anomalous provision of a contract entered into under wholly different conditions."

B. Support of this exceptiin derives from a reading of the quotation itself. It is clear, for example, that where both seller and buyer intend that a sale be made for purpose of manufacture, the character of such sale would not retroactively be converted to

a sale for waste through an accidental, but nevertheless factual, escape of the gas after the buyer took possession. Yet this would be the result of employment of the Examiner's reasoning.

C. In lieu of the above quotation, Humble proposes the following:

"In any event, determination of whether or not sale is one for manufacture must turn upon the intent of the parties. In ascertaining that intent, consideration may be given to documentary evidence in contracts, operations under such contracts, actual disposition of the gas, and the like. On this record, such evidence shows clearly that the sales here involved are sales for manufacture."

Exception VIII.

A. Humble excepts to the following, appearing at page 175 of the Decision:

"Since the principal business of the Buyer under the contracts namely, El Paso, is the purchase, transmission and sale in interstate commerce of natural gas, there is no provision in them for the resale to others of such gas."

B. Whatever might be the facts reflected by other proceedings Humble submits that there is no evidence in this proceeding upon which the statement quoted above can be predicated.

C. This unsupported speculation should be replaced by the following:

"In any event, the provisions in the contracts between Humble and El Paso harmonize with the purpose of the parties to effect a sale of casinghead gas for processing, after which the buyer, El Paso, might dispose of the merchantable products of the processing."

Exception IX.

A. Humble excepts to the following, appearing on the indicated pages of the Decision:

1. "In connection with the contention that these sales of gas are for 'manufacture' and not in interstate commerce and therefore not subject to the jurisdiction of the Commission under the Act it is appropriate to note the words of the Supreme Court in Mandeville Island Farms, Inc., et al., v. American Crystal Sugar Company, 334 U.S. 219 (1948):

"* * * The artifical and mechanical separation of "production" and "manufacturing" from "commerce" without regard to their economic continuity the effects of the former two upon the latter, and the varying methods by which the several processes are organized, related and carried on in different industries, or indeed within a single industry, no longer suffices to put either production or manufacturing and refining processes beyond the reach of Congress or of the statute' " (p. 46).

2. "The cases thus cited by the petitioners simply reflect the practical operation of our peculiar form of government coordinating the action of two sovereignties, the more powerful in the area benevolently

yielding to the lesser to the extent necessary to allow the latter to meet the pragmatic demands upon it, yet jealously guarding its own and more widespread interests from unreasonable discrimination and undue burden" (p. 52).

3. "Relative to the question here in issue, it appears pertinent to quote the language of the Supreme Court in Mandeville Island Farms, Inc., v. American Crystal Sugar Co., supra:

'The Shreveport doctrine cut Congress loose from the haltering labels of "production" and "manufacturing" and gave it rein to reach those processes when they were used to defy its purposes regarding interstate trade and commerce. In doing so the decision substituted judgment as to practical impeding effects upon the commerce for rubrics concerning the boundaries, as the basic criterion of effective congressional action' " (p. 54).

B. The principal authority supporting this exception is Section 1(b) of the Act which confines the jurisdiction of the Commission over sales to those made in interstate commerce for resale, forbidding application of the Act's provisions to "any other" sale. Clearly, a sale in intrastate commerce is thus outside the Commission's jurisdiction. Overwhelming support for this exception is also found in the Mandeville case, to which the Examiner mistakenly looks for support for his error. For the Supreme Court there recognized the power of Congress under the Commerce Clause to control, if it elected to assert such authority, certain intrastate production and manufacturing processes through application of the Shreve-

port doctrine. Indeed, the Examiner's error becomes transparent in his express reliance upon Mandeville's resort to the Shreveport doctrine (p. 54). We are not here concerned with whether Congress might have employed the Shreveport doctrine to control intrastate sales and manufacturing processes, for Section 1(b) is irrefutable evidence of a decision by Congress not to invoke the Shreveport doctrine. Moreover, as this Commission well knows, both the language and especially the history of the Federal Power Act and of the Natural Gas Act are replete with evidence of the care taken by Congress to assure that the Commission's jurisdiction not extend to any intrastate matters through employment of the Shreveport doctrine.

C. In lieu of the above quotations, Humble respectively proposes the following:

1. "In connection with the contention that these sales of gas are for 'manufacture' and not 'for resale,' it should be noted that the Supreme Court has long recognized in numerous decisions the intrastate character of production and manufacturing processes and the consequent authority of the state to control such operations. It is true that the Supreme Court has held that Congress is authorized, under the Shreveport doctrine, to assert a measure of control under the Commerce Clause over certain intrastate operations. As the Court said in Mandeville Island Farms Inc., v. American Crystal Sugar Co., 334 U.S. 219, 232-233 (1943):

'With extension of the Shreveport influence to general application,[11] it was necessary no longer to search for some sharp point or line where inter-

state commerce ends and intrastate commerce begins, in order to decide whether Congress' commands were effective. For the essence of the affectation doctrine was that the exact location of this line made no difference, if the forbidden effects flowed across it to the injury of interstate commerce or to the hindrance or defeat of congressional policy regarding it.

* * * * * * * *

'The Shreveport doctrine cut Congress losse from the haltering labels of "production" and "manufacturing" and gave it rein to reach those processes when they were used to defy its purposes regarding interstate trade and commerce.'

"These comments serve to underscore the lack of power in this Commission to control the sales of casinghead gas here involved. For here the record amply demonstrates the complicated manufacturing process required to transform this commodity into gas of merchantable quality suitable 'for resale for ultimate public consumption' [Section 1(b)]. Both the language and history of the Natural Gas Act are replete with evidence of the intention of Congress to foreclose this Commission from assertion of jurisdiction over intrastate operations, through employment of the Shreveport doctrine or otherwise."

2. "The cases cited by petitioners reflect the practical operation of our peculiar form of government coordinating the actions of two sovereignties, the State controlling production and manufacturing operations but yielding to the Federal Government in con-

trol over subsequent movement in interstate commerce of the products of the production and manufacturing operations. In Section 1(b) of the Act, Congress has expressly recognized this constitutional concept and affirmatively refrained from any attempt to control sales for manufacturing, which are here a part of the 'production' operation."

3. "Relative to the question here in issue, the Mandeville case demonsthates that this is a situation where it is necessary to decide where intrastate commerce ends and interstate commerce begins. Section 1(b) requires that we draw this line, and in so doing, the power to control the sales and processing of casinghead gas fall clearly under the jurisdiction of the State. It is not relevant to consider whether, under the affectation doctrine, these functions are such that they might have been constitutionally subjected to federal control, for Congress in Section 1(b) has expressly refrained from any effort to regulate intrastate sales or operations."

Exception X.

A. Humble excepts to the following, appearing on page 210 of the Decision:

"It is concluded that the sales of gas, including casinghead gas, by the petitioners herein are sales in interstate commerce for resale, or such other purpose as the purchaser may choose. Actually the purchaser chooses in each instance to remove from the gas certain components from which they purchaser manufactures natural gasoline and other products. However, nothing is manufactured from the residue gas and it is resold in interstate commerce."

B. The authorities supporting this exception are the same as those set forth in Exception IX above and also the decision of the Supreme Court in Interstate Natural Gas Co. v. Federal Power Commission, 331 U.S. 682 (1947), where the Court recognizes that "processing" may constitute an interruption in the movement of gas so as to prohibit classification of the sales here involved as sales "for resale."

C. In lieu of the above quotation, Humble proposes the following:

"It is concluded that petitioners' sales of casinghead gas are intrastate sales for manufacture and not sales in interstate commerce for resale. The record overwhelmingly shows the necessity for removing from such casinghead gas certain components and an economic desirability of removing others. Only after such processing is the resulting gaseous commodity suitable for 'resale for ultimate public consumption.' Such processing is clearly 'manufacturing' in the ordinary sense of that term and also under a long line of decisions by the Supreme Court."

Exception XI.

A. Humble excepts to the following, appearing on page 179 of the Decision:

" 'Any other sale' under petitioners' interpretation of the language appears to mean any sale prior to and other than the sale which results directly in the delivery of the natural gas into the pipeline of the

interstate transmission line.[13] Based upon that interpretation of the Act, petitioners contend that in order for their sales to be subject to the regulation of the Commission they must be found to be made directly into the steam (sic) of interstate commerce; and, that consequently, a sale made prior to such ultimate sale and delivery into the interstate pipeline, even though one of a series of sales which eventuate therein, is not subject to the Commission's jurisdiction.

B. Authority for this exception lies in Humble's petition and in its brief filed with the Examiner.

C. In lieu of the above quotation, Humble proposes the following:

" 'Any other sale,' under petitioners' interpretation of the statutory language would foreclose Commission jurisdiction over sales in intrastate commerce. A mere glance at Section 1(b) of the Act suffices to establish the lack of such jurisdiction in the Commission. Accordingly, it is here unimportant how far Congress might have gone, under the affectation doctrine, in controlling intrastate sales or operations. If it is found, as we do, that the sales of petitioners are intrastate commerce, our inquiry is at an end."

---

[13] That contention would seem to produce the same result as the earlier one that the Phillips decision does not go beyond that single, narrow point."

Exception XII.

A. Humble excepts to the following, appearing on the indicated pages of the Decision:

1. "It should also be said that evidence respecting the transportation and sale of specific quantities of the gas sold by Shell to Phillips, by Deep South to United, and by Humble to its several purchasers does not appear from the record. Perhaps in the usual case, it would be desirable and, in fact, necessary, that more evidence on that point be required. However, it is clear that from the mass of gas with which the gas of those sellers is commingled soon after passing the delivery point, substantial volumes, which must include portions of that produced by those sellers, are transported in interstate commerce for resale" (p. 49).

2. "Under the circumstances it must be concluded that in such a proceeding as this is, as distinguished from the usual one, inferences least favorable to the petitioners must be drawn from the evidence in the record on certain points" (p. 50).

3. "The evidence in this record respecting the redisposition of residue gas by those to whom Humble sells and delivers casinghead gas is quite sketchy and inconclusive. It is based, in fact upon information furnished Humble's witness by casinghead gas plant operators in response to inquiries as to whether or not such plants were selling residue gas to pipelines '[t]hat moved the gas finally into interstate commerce, or across the State line.' The cases represented by the 44 contracts and 4 division orders

were determined so to be. Thus, if another of the parties were charged with the burden of proving the interstate nature of the movement of such gas after its sale and delivery by Humble, some question might arise as to the adequacy of the proof. However, it is not believed that anyone else has that burden. This is an instance in which it appears appropriate to derive from the evidence inferences least favorable to Humble" (p. 56).

B. Authority for this exception appears in the first sentence of item 1., quoted above. If the Examiner were right in this statement, there is a complete lack of warrant for his finding that the sales involved are in interstate commerce and that each of petitioners is, with respect to such sales, a natural-gas company (pp. 58-59). For he has said that the evidence on which such a finding must be based "does not appear from the record." Moreover, granting arguendo that there is a lack of evidence with respect to the destination of the gas covered by the sales here involved, the Examiner might be justified in dismissing or denying the petitions for failure of petitioners to discharge their burden of proof. But want of evidence as to destination would surely not afford warrant for finding that the sales are in interstate commerce.

C. Humble proposes that the above quotations be stricken and that no substitution be made therefor.

Exception XIII.

A. Humble excepts to the findings and conclusions of the Examiner beginning with the first full para-

graph on page 182 of his Decision and continuing through the first full paragraph on page 189.

B. Authority for this exception appears in Section 1(b) of the Natural Gas Act, and in Coe v. Errol, 116 U.S. 517 (1886); Crescent Cotton Oil Co. v. Mississippi, 257 U.S. 129 (1921); Oliver Iron Mining Co. v. Lord, 262 U.S. 72 (1923); Superior Oil Co. v. Mississippi, 280 U.S. 390 (1930); Utah Power & Light Co. v. Pfost, 286 U.S. 165 (1932); Chassaniol v. Greenwood, 291 U.S. 584 (1934); and Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157 (1954).

C. In lieu of the Examiner's findings and conclusions referred to above, Humble proposes that there be substituted the following:

"In a long line of cases beginning with Coe v. Errol, 116 U.S. 517 (1886), the Supreme Court has consistently held that the gathering or collection of goods at a central point in the state from which trnasportation to another state begins does not involve interstate commerce. Likewise, decisions of the Court such as Chassaniol v. Greenwood, 291 U.S. 584 (1934), make it clear that the production and preparation of casinghead gas in a form suitable for resale for ultimate public consumption is a transaction in intrastate commerce. The fact that processing intervenes between the sales made by petitioners and the sales of residue gas made by the operators of the processing plants furnishes further reason why the sales of petitioners must be held to be local in character. This also follows logically from the hold-

ings of the Supreme Court in Utah Power & Light Co. v. Pfost, 286 U.S. 165 (1932) and Crescent Cotton Oil Co. v. Mississippi, 252 U.S. 129 (1921). In short, the decided cases require a conclusion that the sales of petitioners are for purpose of manufacture and are consummated in intrastate commerce."

Exception XIV.

A. Humble excepts to the findings and conclusions of the Examiner beginning with the second full paragraph on page 57 and continuing through the partial paragraph appearing on page 59.

B. As authority for this exception, Humble refers to and relies upon the authorities set forth in each and every one of its preceding Exceptions herein and the cases cited in its brief appended hereto.

C. In lieu of the findings and conclusions referred to above, Humble proposes the following substitution:

"Petitioners' sales of casinghead gas here involved are sales in intrastate commerce for purpose of processing or manufacturing and are not sales in interstate commerce for resale. Therefore, with respect to such sales, petitioners are not natural-gas companies."

Conclusion.

The Exceptions hereinabove set forth are more fully supported by Humble's brief filed herewith.

Respectfully submitted,

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Dated at Houston, Texas, May 25, 1955

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BRIEF OF HUMBLE OIL & REFINING COMPANY IN SUPPORT OF EXCEPTIONS.

United States of America.

Federal Power Commission.

In the Matters of:
Deep South Oil Company of Texas, Shell Oil Company, Humble Oil & Refining Company.
Docket No. G-2952, Docket No. G-4671, Docket No. G-5261.

I.

Introduction.

On November 26, 1954, Humble Oil & Refining Company (Humble) filed its petition for a declaratory order to remove uncertainty concerning its sales of casinghead gas at or near the well under Order 174-A and for declaration of status. This petition was filed pursuant to Section 1.7(c) of the Commission's General Rules of Practice and Procedure and Section 5(b) of the Administrative Procedure Act [5 U.S.C. 1004(d)].

Hearings were held on Humble's petition, consolidated with others named above, commencing on November 29, 1954, continuing through December 2, 1954, and resuming and concluding on January 10, 1955.

By order issued January 25, 1955, the Commission denied a motion to omit the intermediate decision procedure.

On April 5, 1955, Edward B. Marsh, Presiding Examiner, issued an intermediate decision, declaring the sales of casinghead gas and gas-well gas by Humble and its co-petitioners to be subject to regulation under the Natural Gas Act, and further declaring petitioners to be "natural-gas companies" within the meaning of the Act.

Humble has, concurrently with the filing of this Brief, filed its Exceptions to such Decision in order to perfect this, its appeal to the Commission. This Brief is filed in support of said Exceptions.

II.

Facts.

In the main, the Examiner's abstract of the facts pertaining to Humble's operations is satisfactory.

We note that the Examiner states on page 24 that the casinghead gas is "processed to remove impurities and the heavier hydrocarbons." This statement would suffice were it not for the erroneous conclusion of the Examiner on pages 38 and 48 of the Decision that the casinghead gas "flows continuously and without interruption" from the well to the interstate pipelines. Humble's Exceptions point out that there is a practical and legal interruption in the flow of the casinghead gas when it is processed in a plant. Therefore, Humble believes that a summary of the record of what occurs in "plant processing" is in order.

Humble's Exhibits 23 and 24 show a typical casinghead gas processing plant and lease gathering and

residue system, together with typical operations involved in a casinghead gas processing plant. Raw casinghead gas moves with the oil out of the wellhead through flow lines to a central point (usually on the lease but in two instances on adjoining leases) at which are located lease stock tanks and separators wherein the crude oil is separated from the casinghead gas. The casinghead gas then moves out of the upper part of the separator through a meter and, if it is not flared or burned, passes through a plant gathering system into the casinghead gas processing plant (T.379, 380). Within the plant it is processed for two purposes: (1) to remove the heavier liquefiable hydrocarbon constituents which have value as such and which make the operation economically feasible; and (2) to remove impurities such as sulphur compounds or water vapor (T.380). Within the plant, the casinghead gas so gathered, along with casinghead gas from other leases, passes through a plant inlet meter (T.382) into a scrubber where condensed liquids, certain impurities, and other materials, including water, are removed (T.383). The casinghead gas thereafter passes out of the top of the scrubber through a set of compressors which increase its pressure substantially and thence move into the lower side of an absorber (T.385,386). The gas passes upward in the absorber counter-current to absorption oil, which is injected into the top portion of the absorber and which serves as a medium to remove the liquefiable constituents. The stripped gas from which the liquids have been removed passes out of the top of the absorber as residue gas from which point it may be returned to the lease for lease operations or for repressuring of the reservoir, or may be sold for local use, or may be delivered into the gathering lines

of an interstate transmission company (T.386). In the latter event, that is, if the gas is to be moved any substantial distance or if it is to encounter low temperatures, it is necessary that it be further dehydrated (T.386, 387). All of the residue gas produced in the plant is normally metered (T.387) regardless of its disposition.

The absorption oil, which is passed counter-current to the raw casinghead gas in the absorber, issues from the bottom of the absorber and the mixture of materials passes to a still where the temperature of the enriched absorber oil is raised, and the hycrocarbon constituents which have been absorbed in the absorber oil are driven off by heat and pass out at the top of the still (T.388). From the still, such material is passed to the de-ethanizer where ethane is fractionated or distilled away and the remaining liquids, to-wit, the propane and heavier hydrocarbons and other constituents making up natural gasoline, pass out the bottom of the de-ethanizer into another fractionater normally called a de-propanizer (T.389). Here, the propane is removed by fractionation and the mixture then passes into a debutanizer where a similar operation takes place, removing the butane. The remaining gasoline, consisting largely of pentanes, hexanes and heavier hydrocarbons but containing some butane, issues from the bottom of the debutanizer and passes to storage for sale to available markets (T.389).

III.

Argument.

In its Brief filed with the Examiner prior to his decision in this case, Humble made four points to support its position that its casinghead gas contracts are not subject to regulation under the Natural Gas Act. Although treated in the reverse order to that in which presented by Humble, the Examiner in his Decision considered and made his separate conclusions on each of such points. In this "Argument," each such point will be stated, followed by a summary of the Examiner's treatment of the point, and Humble's reply.

A. The Sales and All Facilities Used in Consummating Them Are a Part of Production and Gathering and Are, Therefore, Exempt From the Commission's Jurisdiction Under Section 1(b) of the Natural Gas Act.

On pages 27 through 33 of his Decision, the Examiner concedes that the sale of casinghead gas is made by the producer before completion of production and gathering. However, admittedly relying on nothing more than his interpretation of dictum by the Supreme Court in the Phillips case, the Examiner concludes that the sale does not come within the exemption of Section 1(b) of the Act.

Our first reply is simply to point out that the holding of the Phillips case may not properly be extended beyond the decision on the facts before the Court.

It is indisputably the holding of the Court that production and gathering had ended and that the sale by Phillips was made after processing. There is no warrant for extending the actual decision in the Phillips case by deciding here that Humble's casinghead gas sales, made before completion of production and gathering and before processing, are not within the exemption of Section 1(b) of the Act. In any event, the dictum quoted by the Examiner from the Phillips case could be applied only to sales in interstate commerce for resale. Regulation of sales in intrastate commerce, whether or not for resale, is forbidden by Section 1(b), as the language of the Supreme Court necessarily contemplated.

Our second reply does not depend on the Phillips case. On April 11, 1955, five days after issuance of the Examiner's Decision, the Supreme Court in Cause No. 191, Natural Gas Pipeline Co. of America v. Panoma Corp. and Cause No. 321, Natural Gas Pipeline Co. of America v. Corp. Commission of Oklahoma, ... U.S. ..., held that the State of Oklahoma could not fix a minimum price on natural gas "after its production and gathering has ended." Said the Court: "We held in Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672, that such a sale and transportation cannot be regulated by a State, but are subject to exclusive regulation of the Federal Power Commission." We submit that the Panoma case decision lays the matter of the dictum in the Phillips case at rest and indicates that the Supreme Court would hold Humble's casinghead gas sales, clearly made before completion of production and gathering, to be exempt from the Commission's jurisdiction.

Section 1(b) of the Act provides that the provisions of the Act shall not apply to the "production or gathering of natural gas." Assuming arguendo that the term "natural gas" as used in the Act includes casinghead gas, the sales of casinghead gas and all facilities used in consummating them are a part of production operations, as that term is used in Section 1(b). This is demonstrated first by the fact that the casinghead sales here involved definitely occur before gathering begins. Title to the gas in all instances except two passes to the purchaser at the lease separator located on the very lease from which the gas is produced. In the other two cases, title passes at a point about 2,400 and 3,020 feet, respectively, from the lease separator but on another lease within the field and before production operations have been concluded. No clearer case of a sale consummated as a part of "production" could be developed than those here involved.

That the sale of casinghead gas in such circumstances is an incident of production is further shown by the circumstances of the production operations. Casinghead gas is necessarily produced in connection with crude oil. In former years, the gas was flared, since no other economic method of disposition existed. Subsequently, as a result of the development of markets for the products of the gas and the efforts of state regulatory bodies and producers in the interest of conservation, it became feasible to sell the gas as a raw material for processing. However, this sale was and is just as clearly a disposition of the gas incidental to its unavoidable production with oil as was it flaring in former days. Casinghead gas is not a com-

modity which can be produced at will and then peddled.

The production and gathering of natural gas are subjects over which state regulatory bodies acting under state conservation laws are competent to act. Numerous state regulations govern the production and gathering of natural gas. Thus, states are constitutionally competent in the interests of conservation to establish the price at which casinghead gas can be sold at the well or separator. Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U.S. 179 (1950); Phillips Petroleum Co. v. Oklahoma, 340 U.S. 190 (1950).

The United States Supreme Court has not yet passed on the question of whether sales made as a part of portion or gathering operations are exempt from the Commission's jurisdiction under Section 1(b). The sales involved in the Phillips case were made after production, gathering and processing had been concluded. Hence the language used in that case regarding the scope of the production and gathering exemptions is not necessary to the decision in the case and is dicta.

There are involved here sales of casinghead gas made at or near the lease separator. The sales are local in character, being consummated as a part of the production operation even before the beginning of gathering. Congress intended such sales to be excluded from the Commission's jurisdiction under Section 1(b).

B. The Sales Are Not of "Natural Gas", But of Casinghead Gas, Which is Not the Same Product as the Surplus Residue Gas Sold by the Plant Operator After the Intervention of Processing.

Briefly stated, from page 164 through page 171 of the Decision, the Examiner concludes that since casinghead gas may be processed and compressed at any time before it reaches the consumer, it must "for purposes of regulation under the Natural Gas Act" be "natural gas" within the meaning of the Act (page 38). In other words, the Examiner starts with the premise that casinghead gas is subject to regulation and then works backward to the conclusion that it is "natural gas" as contemplated by and defined in the Act.

Congress obviously intended in Section 1(b) that determination of whether or not a mineral is "natural gas", suitable for consumption, be made at the time of the sale in question. Simply because a mineral fuel is sold in interstate commerce for resale does not make such sale subject to regulation under the Natural Gas Act. Certainly, a sale of coal, for example, in interstate commerce for resale would not be subject to regulation under the Act, even if somewhere in the channel of commerce a portion of the coal be converted into ethane or methane. We submit that unprocessed casinghead gas was not in 1938 and is not now "natural gas" suitable for resale for ultimate consumption or capable of being transmitted in high pressure pipe lines.

The record here shows that casinghead gas contains numerous impurities such as carbon dioxide,

nitrogen, helium, water vapor, free water, drilling mud, rust, sand, dirt and various sulphur compounds. Normally, casinghead gas also contains valuable liquefiable constituents, such as ethane, propane, butanes, pentanes and heavier components, including natural gasoline, which it is desirable to remove for their value and which must be removed to permit use of the residue gas. The commodity sold under the casinghead gas contracts here involved is the total of all of these constituents of which methane, the principal constituent of natural gas, is only one (T.376-377). Such casinghead gas is generally not suitable for use for domestic or industrial fuel, it being necessary to remove the impurities and extract the liquefiable components before a product, residue gas, is obtained which can be made suitable for such use (T.376).

Thus, casinghead gas is not the commodity to which the Natural Gas Act applies any more than it would apply to the oil and casinghead gas before separation. Section 2(5) of the Act defines natural gas as "either natural gas unmixed, or any mixture of natural and artificial gas." This language excludes from the Act's definition of "natural gas" any mixture of natural gas with other components except artificial gas. Casinghead gas is therefore not covered because it is not such a mixture. Nor is it natural gas in the sense of being suitable for industrial, commerical or domestic use.

Conversely, to hold that sales of casinghead gas are covered by the Natural Gas Act would require a finding that the Act applies to mixtures if they include the product specifically covered by the Act, to-

wit, natural gas. As already indicated, this would seemingly lead next to an assertion of jurisdiction over mixtures of casinghead gas and the oil with which it is inevitably produced. We do not believe that the Act would permit this any more than it would permit a claim of jurisdiction over casinghead gas.

The compensation received by the lease operator for casinghead gas is, under typical contracts, dependent upon the value of the liquids extracted and the amount received by the plant operator for residue gas derived from the casinghead gas. It is clear, therefore, that the Commission can control the consideration received by the lease operator for the methane constituent of the casinghead gas through its control over the price at which the plant operator sells the residue gas where the same moves in interstate commerce. Thus, sound policy as well as settled principles of statutory construction nullify any occasion for an assertion of jurisdiction over the sale of casinghead gas.

Our view that the casinghead gas sold for processing herein is not the natural gas to which the Act applies is consistent with those cases in which the Courts have dealt with the manufacturing operation in which the liquefiable components and the dry gas are separated. Signal Gasoline Corp. v. Commissioner of Internal Rev., 77 F. 2d 728 (C.C.A. 9, 1935); Brea Cannon Oil Co. v. Commissioner of Internal Rev. 77 F. 2d 67 (C.C.A. 9, 1935); see Utilities Production Corp. v. Carter Oil Co., 72 F. 2d 655 (C.C.A. 10, 1934); Clymore Production Co. v. Thompson, 13 Fed. Supp. 469, 470 (D.C. Tex. 1936). In these cases, casinghead

gas, as a raw material, is treated as a different product from the residue gas derived through the manufacturing process and sold by the plant owner along with the other products obtained.

C. The Sales Are Not "For Resale" But Are Sales For Processing.

The over-emphasis placed by the Examiner on the dictum in the Phillips case finally leads him into the impossible situation which he candidly recognizes in this paragraph on page 179 of the Decision:

"It is concluded that the sales of gas, including casinghead gas, by the petitioners herein are sales in interestate commerce for resale, or such other purpose as the purchaser may choose. Actually the purchaser chooses in each instance to remove from the gas certain components from which the purchaser manufactures natural gasoline and other products. However, nothing is manufactured from the residue gas and it is resold in interstate commerce."

A careful analysis of these conclusions of the Examiner is decisive of most of the points here in issue. In the first sentence, the parenthetical statement "including casinghead gas" clearly demonstrates that the Examiner differentiates in his thinking between "natural gas" and casinghead gas. In the remaining portion of the first sentence, the Examiner says petitioners' sales are either (1) "sales in interstate commerce for resale," or (2) for "such other purpose as the purchaser may choose." The sales here must fall in one or the other of the categories; they cannot fall in both. The Examiner makes the decision as to cate-

gory in the next sentence when he says: "Actually the purchaser chooses in each instance to remove from the gas certain components from which the purchaser manufactures natural gasoline and other products" (emphasis supplied). As a matter of fact, the inescapable conclusion is thus recognized that Humble's sales are for manufacture and not for resale. The last sentence of the paragraph may have been intended as some sort of qualification of a conclusion which clearly removes Humble from the Commission's jurisdiction, but a close reading indicates otherwise. Said the Examiner: "However, nothing is manufactured from the residue gas and it is resold in interstate commerce." Obviously, nothing is manufactured from the residue gas. "Residue" refers to that gas remaining after the processing or manufacturing operations are completed. Furthermore, such a sale for manufacturing is, as we later show, a sale in intrastate commerce and the Act does not apply to sales intrastate commerce even if successive resales be in interstate commerce. The Examiner finds only that "it is resold in interstate commerce (emphasis supplied).

We earnestly submit that this one paragraph of the Decision compels a decision in Humble's favor.

Under Section 1(b) of the Natural Gas Act another essential to jurisdiction is that the sale must be one "for resale." While the primary purpose of this restriction is to deny jurisdiction over sales for consumption, it is evident that the restriction assumes that the gas is ready for use.

The terms of the several contracts under which the sales herein involved were made show definitely that the sales are for processing, not for resale. The 1932 Form (Exhibit 26) provides in the clause entitled "Purpose":

"Purpose—The gas hereby sold is conveyed to the buyer for the purpose of manufacturing gasoline or such other product or products which may be manufactured by buyer's plant."

The 1939 Form merely stipulates that the title to the casinghead gas will vest in buyer at the delivery place "without regard to the purpose for which said casinghead gas may thereafter be used by buyer." Clearly, however, as shown by the other provisions, the purpose of the sale is for processing, involving the removal of the valuable liquefiable constituents. The El Paso Form (being the 1939 Form with a special clause dealing with the payment for residue gas) contains comparable provisions. While no express provision of this character appears in the Division Order form, the sale in such instance is obviously for processing.

The essential purpose of the contract in each case is that the casinghead gas shall be taken by the buyer and processed in a casinghead gas plant for the removal of liquids and impurities, and that the seller will be compensated for the casinghead gas on the basis of the value realized from the liquids and on a basis which takes into account a portion of what the plant operator receives from the sale of the surplus residue. Most of the detailed provisions of the contracts deal with subjects incident to the processing of

gas and the basis on which payments shall be computed. What is sold, therefore, is not ready for use, but is merely a material for processing.

Humble has no connection with any resale of the residue which may be made by the plant owner. Humble is not a party to the sale of the residue gas for the very obvious reason that it does not own the residue gas, has no voice in determining what disposition is made of the residue, and is not even informed of what disposition is made. The sale of the residue is under the sole and complete control of the plant owner, who in no case involved in this proceeding is related to or affiliated with Humble. Thus, there is no basis for concluding that the sales of casinghead gas by Humble are for resale. On the contrary, every fact and circumstance relating to the transaction and the whole nature of the operation make the contrary conclusion mandatory, namely, that the sales are for manufacturing or processing. It is the manufacturing process which results in the extraction of the valuable liquid hydrocarbons, the market value of which determines in a large measure the price which Humble, as the producer, will receive for its casinghead gas. Since Section 1(b) of the Act states that the Act applies only to sales for resale and expressly provided that it shall not apply "to any other sale," it seems clear that the Commission has no jurisdiction over the sales herein described.

The Commission, in its findings in the Interstate case [Interstate National Gas Co. v. Federal Power Commission, 331 U.S. 682 (1947)] found that the gas there involved (gas-well gas) moved

". . . in a constant flow from the mouths of the wells from which it is produced through pipe lines belonging to Interstate to the compressor station of the respective purchaser, and thence . . . into and through states other than Louisiana . . ., all without interruption . . . (emphasis supplied) 3 PP. C 416, 423.

The Supreme Court, in its opinion in this case, said that the movement of the gas across the state lines was "a continuous process without interruption for storage, processing or for any other purpose." 331 U.S. at 685. These statements, in our opinion, point to the conclusion that if processing had intervened the sales would have been held to be local in characater and not for resale.

D. The Sales Are Not "in Interstate Commerce".

The Examiner bases his adverse conclusion on this issue upon two points, to-wit:

(1) To quote from page 180 of the Decision:

"There is a constant uninterrupted flow of gas from the well head through the flow lines, the separators, the gathering lines where the gas is commingled with gas from other producers, the gasoline plants, the compressing, dehydrating and desulphurizing equipment, into interstate transmission lines.

(2) His insupportable resort to the Shreveport doctrine and his conclusion that the cases cited by petitioners are not in point because they do not expressly and positively hold that the Federal Government can-

not regulate intrastate sales (PP. 178, 182-187 of the Decision).

In reply to his first point, practical considerations, such as passage of title to and control of the gas from the producer to the plant operator before a state line is crossed and the intricate processing operations which occur inside the plant, clearly demonstrate that a definite interruption of flow does take place. In addition to this obvious practical truth, there is legal support for asserting that the flow of gas is thus "interrupted," as a matter of law. The Supreme Court, in its opinion in Interstate Natural Gas Co. v. Federal Power Commission, supra, said (page 685), that "the entire movement of the gas from the wells to the purchasing companies . . . is a continuous process without interruption for storage, processing or any other purpose." We submit the Examiner's position on this point is untenable.

The Examiner's second point we shall treat at greater length below. Also, reference is made here to Exception IX for an exposition of his erroneous resort to the Shreveport doctrine.

Humble's sales of casinghead gas here involved are not sales in interstate commerce but occur in the course of a local operation of a type which the United States Supreme Court has held constitutes an intrastate rather than an interstate transaction. This view is reinforced by the fact that processing or manufacturing operations intervene between the sale of casinghead gas, which is consummated at the lease separator, and the sale of the surplus residue gas by the plant operator, which is consummated at the out-

let of the processing plant. An additional reason why we believe that the sales are not in interstate commerce is the lack of knowledge or information on the part of Humble, as seller of casinghead gas, as to what disposition the plant operator intends to make or makes of the residue gas. Finally, we would point out that the record does not permit a finding that any part of the residue gas derived from the casinghead gas which Humble sells under any of the agreements actually moves in interstate commerce. These considerations will be examined at greater length.

It has long been established that the gathering or collection of goods at a central point in the state from which transportation to another state begins does not involve interstate commerce. Coe v. Errol, 116 U.S. 517 (1886); Oliver Iron Mining Co. v. Lord, 262 U.S. 172 (1923)

In Coe v. Errol, Coe customarily cut timber in New Hampshire and hauled or floated the logs to the Androscoggin River in the Town of Errol, also in New Hampshire. There the logs lay over for nearly a year before being floated down the river to mills in Maine. The Town of Errol attempted to tax the logs while they were awaiting journey to Maine, and Coe resisted the tax on the ground that the logs were in interstate commerce. The Court held that the logs were subject to taxation by the town, since they had been cut within the state and had not begun their interstate journey. It said:

"When the products of the farm or the forest are collected and brought in from the surrounding coun-

try to a town or station serving as an entrepot for that particular region, whether on a river or on a line of railroad, such products are not yet exports nor are they in the process of exportation, nor is exportation begun until they are committed to the common carrier for transportation out of the State to the State of their destination or have started on their ultimate passage to that State." 116 U.S. 525.

"The carrying of them in carts or other vehicles or even floating them to the depot where the journey is to commence is not part of that journey. That is all preliminary work, performed for the purpose of putting property in a state of preparation and readiness for transportation. Until actually launched on its way to another State, or committed to a common carrier for transportation to such State, its destination is not fixed and certain." 116 U.S. at 528.

Humble's casinghead gas is a part of the general mass of property in the state and subject to its control, at least until after processing has been completed, and this is even more surely true at the time of Humble's sales thereof. Nor is this changed by the fact the purchaser may, after processing, sell and commit the residue gas to an interstate journey. Coe v. Errol established the logic of this point when the Court said:

"It is true, it was said in the case of The Daniel Ball, 10 Wall. 557, 565: 'Whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced.' But this movement does not

begin until the articles have been shipped or started for transportation from the one State to the other. The carrying of them in carts or other vehicles or even floating them to the depot where the journey is to commence is no part of that journey. That is all preliminary work, performed for the purpose of putting the property in a state of preparation and readiness for transportation. Until actually launched on its way to another State, or committed to a common carrier for transportation to such State, its destination is not fixed and certain. It may be sold or otherwise disposed of within the State, and never put in course of transportation out of the State." 116 U.S. at 528.

A similar point was involved in Oliver Iron Mining Co. v. Lord. Three-fourths of the company's iron ore mining took place in open pits. Empty railroad cars were run from the railroad yards into the pits, loaded, and returned to the railroad yards, where they were hooked to trains which carried the ore interstate, practically all of the company's iron ore being sold to out-of-state consumers. The state levied an occupation tax on the company's mining operations, and was sustained by the Court on the ground that the Company's handling of the railroad cars to and from the mines constituted a part of the mining operation, and mining is not interstate commerce. The Court held that the iron ore did not enter interstate commerce until after the mining was done.

The production and preparation of casinghead gas for sale for consumption may well be compared with the following sequence described by the Court in Chassaniol v. Greenwood, 291 U.S. 584, 587 (1934):

"Ginning cotton, transporting it to Greenwood, and warehousing, buying, and compressing it, are each, like the growing of it, steps in preparation for the sale and shipment in interstate or foreign commerce. But each step prior to the sale and shipment is a transaction local to Mississippi, a transaction in intrastate commerce."

The purchase by a plant operator of casinghead gas at the lease, the operations involved in gathering that gas, along with similar gas produced from other wells and leases, and its processing in the casinghead gas plant are all local activities and constitute intra- as distinguished from interstate commerce. Humble's sales of casinghead gas to plant operators are local sales, since the production and gathering operations during the course of which the sales are made are local in character.

The fact that processing or manufacturing operations intervene between the sale by Humble of its casinghead gas and the sale by the plant operator of the residue is an additional reason why Humble's sale is local in character. It has long been the rule that manufacturing is not commerce and that sales of material to a manufacturer are not sales in interstate commerce. Utah Power & Light Co. v. Pfost, 286 U.S. 165 (1932) (holding that the generation of electricity is not commerce and hence is subject to taxation by the state); Crescent Cotton Oil Co. v. Mississippi, 257 U.S. 129 (1921) (holding that the ginning of cotton, which consists of separating the cotton from the seed, is manufacture and so not commerce, and that the cotton being ginned is not an article of interstate commerce); National Labor Relations

Board v. Idaho-Maryland Mines Corp., 98 F. 2d 129 (C.C.A. 9 1938) (holding outside the jurisdiction of the National Labor Relations Board a company which mined a gold-silver alloy and sold it to the Government mint in the same state, where it was refined, the gold and silver separated, and the ore commingled with other ore in the process, even though the refined gold and silver were later shipped out of the state by the Government); see Parker v. Brown, 317 U.S. 341 (1943) (holding that a state could regulate the sale of raisins for processing, although 90% of the processed raisins moved in interstate commerce, since (among other reasons) the transactions regulated were wholly intrastate).

Particular attention is called to Crescent Cotton Oil Co. v. Mississippi, supra, wherein the Court states:

"The separation of the seed from the fiber of the cotton, which is accomplished by the use of the cotton gin, is a short but important step in the manufacture of both the seed and the fiber into useful articles of commerce, but that manufacture is not commerce was held in (citations). And the fact, of itself, that an article when in the process of manufacture is intended for export to another state does not render it an article of interstate commerce. Coe v. Errol, 116 U.S. 517, 29 L.Ed. 715, 6 Sup. Ct. Rep. 475, and New York C.R. Co. v. Mohney, 252 U.S. 152, 155, 64 L.Ed. 502, 505, 9 A.L.R. 496, 40 Sup. Ct. Rep. 287. When the ginning is completed, the operator of the gin is free to purchase the seed or not; and, if it is purchased, to store it in Mississippi indefinitely, or to sell or use it in that state, or to ship it out of the state for use in another; and, under the cases cited, it is only in

this last case, and after the seed has been committed to a carrier for interstate transport, that it passes from the regulatory power of the state into interstate commerce and under the national power." 257 U.S. at 136.

While the foregoing rule (that sales to a manufacturer are not in interestate commerce) will not be mechanically applied to determine the scope of federal power when the question involves the exercise of such power over matters which "affect" interstate commerce [See Mandeville Island Famrs v. American Crystal Sugar Co., 334 U.S. 219 (1948)]. Such question is not involved under the Natural Gas Act. Under this Act the sale must be in "interestate commerce" which in Section 2(7), is defined as:

"Commerce between any point in a state and any point outside thereof, or between points within the same state but through any place outside thereof. . ."

In this situation the long-established rule that manufacturing separates intrastate from interstate commerce is applicable and accordingly Humble's sales of casinghead gas are not sales in interstate commerce as that term is defined in the Natural Gas Act.[1]

[1] Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U.S. 279 (1950), is not decisive of the issue here involved. That case involved the power of the state to fix the price at the wellhead on natural gas produced within its borders and moving interstate. It did not necessarily decide whether the sales in question were in interstate commerce.

Moreover, Humble's casinghead gas sales would constitute intrastate matters for the purpose of state regulation and taxation. Parker v. Brown, supra; Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157 (1954). In the latter case, the Court struck down a state tax sought to be imposed on interstate pipe lines purchasing at the tailgates of processing plants of Phillips Petroleum Company, the tax being measured by the volume of gas "taken." The Court below, in upholding the tax, had relied on the case of Utah Power & Light Co. v. Pfost, supra, saying that the taking "is just as local in nature as the production itself is local." 347 U.S. at 164. But the Supreme Court rejected this approach, adding this note in respect of its decision in the Pfost case (347 U.S. at 168, n. 6):

"The Court found that in the operation there involved it was necessary to convert the mechanical energy into electrical energy before it could be transmitted and that this transformation was completed at the generator when the interstate movement began. This is analogous to the situation here where the gas is prepared by Phillips for transmission and is then fed into appellants' lines."

It merely passed upon the competence of the state to act in a situation where the regulation is essentially local, though having some impact on commerce. Furthermore, the applicability of the Natural Gas Act to the sale was not before the Court. And finally, the gas involved was not casinghead gas.

Quite plainly, the Court seems to say that Phillips' "preparation" of the gas—that is, its processing—is subject to state power and that interstate transmission does not begin until after "preparation" has been completed.[2]

Another characteristic of Humble's local sales of casinghead gas which distinguishes them from interstate sales [such as those involved in Phillips Petroleum Co. v. State of Wisconsin, 347 U.S. 672 (1954)] is Humble's lack of knowledge as to purchaser's intended disposition of either the products or the residue gas. Where disputed sales or operations have been held to be interstate, Courts have stressed this consideration.[3] And the Supreme Court has recog-

[2] This completely and obviously consonant with the Court's later upholding of Commission jurisdiction over Phillips' sales after "preparation." Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672 (1954). Nor does it collide with the loose dictum to the effect that " * * * the legislative history indicates a congressional intent to give the Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company." 347 U. S. at 682.

[3] See, e.g., Jersey Central Power & Light Co. v. Federal Power Commission, 319 U.S. 61, 68 (1943); Connecticut L. & P. Co. v. Federal Power Commission, 324 U.S. 515, 520-521 (1945); Pennsylvania Water & Power Co. v. Federal Power Commis-

nized a distinction between sales made with a view to a certain result and those made simply with indifferent knowledge that the buyer contemplates that result, holding a sale made under the latter circumstance not in interstate commerce. Superior Oil Co. v. Mississippi, 280 U.S. 390, 395 (1930).[4]

In the sales here involved, with the possible exception of the eight sales to El Paso (Group B above), Humble did not have even "indifferent knowledge" of the purchaser's contemplated disposition of the residue [5] for, as has been shown, the residue derived from the processing operation (after sufficient quantities have been returned for lease operations) may be used in the plant operation, sold to local markets or, in some cases, sold to interstate pipeline companies, all depending on the needs and decisions of the plant operator (T.377). Actually it was only upon inquiry, made for the purpose of complying with Order 174-A, that Humble found out that a portion of the residue derived from the casinghead gas sold by it might move in commerce for resale.

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sion, 343 U.S. 414, 419-420 (1952); California Electric Power Co. v. Federal Power Commission, 199 F. 2d 206, 209 (C.A. 9, 1952).

[4] It is significant here to note that, in Hartford Electric Light Co. v. Federal Power Commission, 131 F. 2d 953 (C.C.A. 2, 1942), Judge Frank took extensive pains to distinguish this feature of the Superior case in finding that Hartford had the required knowledge as to the interstate flows of energy. 131 F. 2d at 958-960.

[5] In the El Paso sales, Humble's knowledge is limited to the fact that a part of such residue was to be taken into El Paso's system.

Moreover, the record here simply will not permit a finding that any part of the residue gas derived after processing from Humble's casinghead gas actually moves in interstate commerce. And without that finding jurisdiction cannot be sustained.

The situation here is to be distinguished from that involved in Interstate Natural Gas Co. v. Federal Power Commission, 331 U.S. 682 (1947), and in Phillips Petroleum Co. v. State of Wisconsin, 347 U.S. 672 (1954). In the Interstate case, the sales were of gas-well gas and, in the language of the Court:

"The entire movement of the gas from the wells to the purchasing companies through the compressor pumps and across the state lines is a continuous process without interruption for storage, processing or for any other purpose." 331 U.S. 685.

Further, the Court noted that the Commission found that the gas " 'is so destined from the moment of its production.' " 331 U.S. at 687.

This is, of course, not true in the case of Humble's sales of casinghead gas. The gas is sold for processing in a casinghead gas plant and there is no certainty that residue gas derived therefrom or any part of it moves in commerce.

Likewise, the situation in the Phillips case is to be distinguished from the situation here under examination. The sales in the Phillips case were by a plant operator of residue gas which obviously (and admittedly) was destined for interstate movement when the sales were made.

IV.

Proposed Findings and Conclusions.

Wherefore, for all of the foregoing reasons, Humble proposes that the Commission, upon consideration of the evidence and applicable law, adopt the following as its findings and conclusions in Docket No. G-5261 as to each and all of the contracts of Humble Oil & Refining Company (Humble) for the sale of casing head gas, which contracts are identified on the first five pages of Exhibit No. 25 in this record:

(1) Casinghead gas is a substance produced inevitably in association with oil. It contains many impurities, foreign matter and valuable liquefiable hydrocarbons, in addition to methane, the usual constituent of natural gas. Such impurities, foreign matter and liquefiable hydrocarbons must be removed in order to derive a residue gas, called natural gas, suitable for consumption for industrial, commercial or residential use.

(2) Humble, after separating the casinghead gas in separators usually located on the lease, sells the same at points near the wellheads to processing plant operators. Humble does not in any wise control the disposition of casinghead gas so sold to the plant operator, which may include lease use, plant use, or other uses within or without the state of production. It is not possible to determine, under usual operations, whether any, all, or none of the residue gas derived from a particular sale of casinghead gas moves to a particular destination.

(3) Humble's compensation for the casinghead gas sold is geared to the price derived by the plant operator from his sale of extracted products and from his sale of residue gas. The purpose of the sale of casinghead gas is to enable the processing accomplished by the plant operator.

(4) After the casinghead gas produced by Humble has been so sold, it is gathered, along with casinghead gas of other producers, by a plant operator into his processing plant. Here, an interruption of movement occurs wherein the impurities and foreign matter are removed. Here also the valuable liquefiable hydrocarbons are extracted. As a raw product, casinghead gas is fashioned by this processing into a change of form to enable the use of its components. Such processing is manufacturing. After processing, the plant owner alone controls and determines the disposition to be made of the residue gas. Until he does so, the residue gas is not irretrievably committed to its intrastate or interstate market, as the case may be. So far as the producers are concerned, the plant operator is free at any time to change his decision respecting the disposition to be made of the residue gas. Humble's sales under each such casinghead gas contract are sales made in intrastate commerce, not in interstate commerce.

(5) Humble's sales under each such casinghead gas contract are not sales for resale, but are sales for processing, a manufacturing operation.

(6) Humble's sales under each such casinghead gas contract are not sales of natural gas, but of casinghead gas, which is not the same product as the

surplus residue gas sold by plant operators after the intervention of processing.

(7) Humble's sales under each such casinghead gas contract and all facilities used in consummating such sales are a part of production operations, as that term is understood in the industry.

(8) No sale by Humble under any such casinghead gas contract is subject to the provisions of the Natural Gas Act, since none is a "sale in interstate commerce of natural gas for resale" within the meaning of that phrase as used in Section 1(b) of the Act; each such sale is exempt as a part of "production" as that term is used in Section 1(b) of the Act.

Respectfully submitted,
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May 25, 1955.

Certificate of Service.

I hereby certify that a copy or copies of the foregoing Exceptions and Brief have been served on the attorneys of record in this proceeding by mailing same to them as follows:

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May 25, 1955.

TRANSCRIPT OF RECORD.

In the United States Court of Appeals Fifth Circuit.
Deep South Oil Company of Texas, Petitioner.
versus No. 15849.
Federal Power Commission, Respondent.

Petition for Review of Order of The Federal Power Commission, Washington, D. C.

U. S. Court of Appeals, Received Dec. 15, 1955, New Orleans, La.

U. S. Court of Appeals, Filed Dec. 15, 1955, John A. Feehan, Jr. Clerk.

Received May 25, 1955, 4 P.M. Federal Power Commission.

EXCEPTIONS OF DEEP SOUTH OIL COMPANY OF TEXAS TO THE DECISION OF EXAMINER EDWARD B. MARSH.

United States of America.

Federal Power Commission.

In the Matters of:
Deep South Oil Company of Texas, Humble Oil & Refining Company, Shell Oil Company.

Docket No. G-2952, Docket No. G-5261, Docket No. G-4671.

Pursuant to Section 1.31 of the Rules of Practice and Procedure of the Commission, Deep South Oil Company of Texas excepts to and appeals from the Decision issued on April 5, 1955 by Presiding Examiner, Edward B. Marsh. Deep South Oil Company of Texas excepts to and appeals from the said Decision in its entirety insofar as it denies the petition of Deep South for an order declaring that Deep South is not a "natural gas company" and that the sales of gas made by Deep South are not subject to regulation under the provisions of the Natural Gas Act. Deep South particularly excepts to and appeals from each of the findings, conclusions, and statements of the Presiding Examiner set forth below, together with each and every statement of the Presiding Examiner that may be read as subsidiary to and in support thereof:

Exception I.

A. Deep South excepts to the following statement on page 146 of the Decision insofar as the statement applies to Deep South:*

"Thereafter, gas processed in the Winnie plant, including gas purchased by Texas Gas from Deep South, will be delivered to Texas Eastern in the amount of about 6,512 Mcf a day from the Winnie-Beaumont line, 35,986 Mcf will be delivered in the Beaumont-Orange line and an extension thereof and a portion of this gas will cross the Texas-Louisiana State line and will then enter into Transcontinental's interstate pipe line."

B. The grounds for this exception are: (1) the statement that gas purchased by Texas Gas from Deep South will be delivered to Texas Eastern is unsupported by the record and contrary to the evidence and (2) it is improper for the Presiding Examiner to determine the present status of Deep South by reference to statements of intention that relate to future transactions.

C. Deep South designates the following portion of the record in support of its exception:

Miller, 265-266, 283-289, 292-293, 308-313;

Jones, Jr., 337-340;

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* The proposed additi nal or substitute findings for Exceptions I through VII are found in Exception VIII.

Exs. 6, 21, 33;

Items C, E;

Decision of the Examiner, pp. 15, 158.

Exception II.

A. Deep South excepts to the following statement on page 180 of the Decision insofar as the statement applies to Deep South:

"The evidence shows, also, that with respect to the sales and deliveries of gas by Deep South from the Refugio lease, the sales and deliveries by Shell from the McElroy field, and all of the sales by Humble in connection with which Humble presented evidence herein, there is a constant uninterrupted flow of gas from the well head through the flow lines, the separators, the gathering lines where the gas is commingled with gas from other producers, the gasoline plants, the compressing, dehydrating and desulphurizing equipment, into interstate transmission lines. Aside from impurities and so much of such gas as is removed frtm the stream in those plants in the form of heavier hydrocarbons, all of the gas produced by petitioners in those areas follows such a course."

B. The ground for this exception is that the conclusion of the Examiner with reference to a constant uninterrupted flow of gas into interstate transmission lines from the wellhead on the Refugio lease owned by Deep South is unsupported by the record and contrary to the evidence.

C. Deep South designates the following portions of the record in support of its exception:

Exs. 16, 22, 33-35;

Jones, Sr., 191-192, 305;

Jones, Jr., 327-337, 569;

Williams, 245-246;

Decision, p. 9.

Exception III.

A. Deep South excepts to the following statement on page 181 of the Decision insofar as the statement applies to Deep South:

"The characteristics of the sales and deliveries of gas by Deep South to Texas Gas, and the sales by Shell to Pipe Line are, or will be, identical with the others just described except that in those instances after the commingled gas leaves the plant, substantial quantities thereof are sold locally and consumed within the States of Texas, and except, also, that all of the commingled gas is not the property of the plant operator but some of it, theoretically, is returned to the owner after processing."

B. The ground of this exception is: The Examiner's conclusion that the characteristics of the sales and deliveries of gas by Deep South to Texas Gas are or will be identical with the characteristics of sales and deliveries of gas made by Shell from the Mc-

Elroy Field and the sales made by Humble is not supported by the record and is contrary to the evidence.

C. Deep South designates the following portions of the record in support of its exception:

Miller, 265-266, 283-289, 292-293, 308-313;

Jones, Jr., 337-340;

Exs. 6, 21, 33;

Item C, 126, 132-134, 145-146, 152-154, 59-60;

Item E;

Decision of the Examiner, pp. 15, 17-25, 58.

Exception IV.

A. Deep South excepts to the following statement on page 181 of the Decision insofar as the statement applies to Deep South:

"The evidence shows that if they have not already begun, there will begin in the very near future the sale and delivery by Texas Gas to Pipe Line Company of substantial volumes of gas processed at the plant, including the gas produced by Deep South and Shell, which gas will thereafter move in interstate commerce and will be sold for resale therein."

B. The grounds for this exception are: (1) the statement that gas produced by Deep South will

"thereafter move in interstate commerce and will be sold for resale therein" is unsupported by the record and is contrary to the evidence, and (2) it is improper for the Examiner to determine the present status of Deep South by evidence of statements of intention with respect to future events.

C. Deep South designates the following portions of the record in support of its exception:

Miller, 265-266, 283-289, 292-293, 308-313;

Jones, Jr., 337-340;

Exs. 6, 21, 33;

Itesm C, E;

Decision of the Examiner, pp. 15, 58.

Exception V.

A. Deep South excepts to the following statement on page 49 of the Decision insofar as it applies to Deep South:

"The gas thus produced by Deep South and by Shell, therefore, flows in a continuous and uninterrupted stream from the point of production in the State of Texas to the point of consumption in another State."

B. The ground for this exception is that the statement as applied to Deep South is not supported by the record and is contrary to the evidence.

C. Deep South designates the following portions of the record in support of its exception:

Miller, 265-266, 283-289, 292-293, 308-313;

Jones Jr., 337-340;

Exs. 6, 21, 33;

Item C, 126, 132-134, 145-146, 152-154, 159-160;

Item E;

Decision of the Examiner, pp. 15, 58.

Exception VI.

A. Deep South excepts to the following statement on page 181 of the Decision insofar as the statement applies to Deep South:

"It should also be said that evidence respecting the transportation and sale of specific quantities of the gas sold by Shell to Phillips, by Deep South to United, and by Humble to its several purchasers does not appear from the record."

B. The ground for this exception is that the statement as applied to Deep South is not supported by the record and is contrary to the evidence.

C. Deep South designates the following portions of the record in support of its exception:

Exs. 16, 22, 33-35;

Jones Sr., 191-192, 205;

Jones Jr., 327-337, 569;

Williams, 245-246;

Decision, p. 9.

Exception VII.

A. Deep South excepts to the following statement on page 182 of the Decision insofar as it applies to Deep South:

"However, it is clear that from the mass of gas with which the gas of those sellers is commingled soon after passing the delivery point, substantial volumes, which must include portions of that produced by those sellers, are transported in interstate commerce for resale."

B. The ground for this exception is that the statement as applied to Deep South is not supported by the record and is contrary to the evidence.

C. Deep South designates the following portions of the record in support of its exception:

Exs. 16, 22, 33-35;

Jones Sr., 191-192, 205;

Jones Jr., 327-337, 569;

Williams, 245-246;

Decision, p. 9.

Exception VIII.

A. In lieu of the statements, findings and conclusions excepted to under I through VII inclusive above, Deep South respectfully proposes the following additional or substitute findings:

"The record proves that the destination of the gas produced by Deep South and delivered on its leases in the Big Hill area and at Refugio is not known and cannot be known. The ultimate point of consumption of the gas so produced and delivered—whether in Texas or in another state—cannot be ascertained.

"The Deep South wells at Big Hill are connected to a gathering system which leads to and serves a processing plant owned by the Texas Gas Corporation at Winnie, Texas. The record shows that at the present time the fuel gas sold by Texas Gas Corporation from this processing plant is consumed entirely within the limits of the State of Texas. The record shows that other gas is delivered to the Winnie plant pursuant to processing agreements under the terms of which Texas Gas processes the gas for the owner and delivers the processed gas for the account of the owner. The largest part of the gas so delivered is delivered for consumption in the State of Texas. The remainder of the gas delivered pursuant to such processing contracts is ultimately delivered into interstate transmission lines. For the period from June 1, 1953 to May 31, 1954 about 5% of all the gas coming out of the Winnie plant moved into such interstate transmission lines. No part of the gas piped into the

Winnie plant is earmarked for or committed to an interstate destination until after the gas has passed through the plant.

"Texas Gas sells gas for its own account to one interstate transmission company, Texas Eastern Transmission Company. At the present time these sales are made from an installation owned by Texas Gas Corporation at Orange, Texas. No gas produced by Deep South moves into the Orange installation.

"The record contains certain statements of intention made by an official of the Texas Gas Corporation in a different proceeding with respect to future deliveries of gas to be made by Texas Gas. These statements indicate that at the time the statements were made it was the intention of Texas Gas Corporation at some future date to deliver gas to Texas Gas Pipe Line Company and thus in turn to Transcontinental Gas Pipe Line Corporation for ultimate delivery in interstate commerce. The same statements showed the intention of Texas Gas Corporation to move gas from the Winnie plant through the installation owned by Texas Gas Corporation at Orange, thus reversing the present flow between those two points. The record contains no proof that such statements of intention will in fact be carried out. If future deliveries are in fact made in accordance with the statements of intention, the possibility will then arise that the gas sold by Texas Gas for its own account to persons who deliver the gas into interstate transmission lines will include gas processed in the Winnie plant. Whether or not deliveries are in fact made in accordance with the aforesaid statements of intention, it will remain impossible to determine

whether such deliveries include any gas produced by Deep South; no part of the gas piped into the Winnie plant is or will be earmarked for or committed to an interstate destination until after the gas has passed through the plant.

"The United Gas Pipe Line Company purchases gas from numerous sources in Texas. One of the sources from which it purchases gas in Texas is the well owned and operated by the Deep South Oil Company of Texas on a lease located at Refugio, Texas. The gas is delivered by Deep South to United at a meter located upon Deep South's lease at Refugio. At that point the gas enters a gathering line owned and operated by United and is commingled with gas bought by United from other producers. At the time of the delivery of the gas by Deep South to United the ultimate destination of the gas is not known. After delivery to United the gas is subsequently processed and compressed by or for the account of United and thereafter enters United's pipeline system.

"Approximately 90% of the gas bought in Texas by United Gas Pipe Line Company is sold from United's pipeline system in Texas for use within the State of Texas. The remainder of the gas bought by United Gas Pipe Line Company in Texas is transmitted to other states in interstate pipelines."

C. Deep South designates the following portions of the record in support of its proposed additional or substitute findings:

Miller, 265-266, 283-289, 292-293, 308-313;

Jones Sr., 191-192, 205;

Jones Jr., 327-340,569;

Williams, 245-246;

Exs. 6, 16, 21, 22, 33-35;

Items C, E;

Decision of the Examiner, pp. 9, 15, 58.

Exception IX.

A. Deep South excepts to the failure of the Examiner to make an express finding that unprocessed gas as it is sold by Deep South from its leases is not suitable for transmission by pipeline over any substantial distance.

B. In connection with Deep South's exception to the Examiner's failure to make the finding described above, Deep South proposes the following additional finding:

"Unprocessed gas as it is sold by Deep South from its leases is not suitable for transmission by pipeline over any substantial distance because of the quantities of liquid hydrocarbons and water vapor found in that gas. The record shows that gas containing such quantities of liquefiable hydrocarbons and water vapor cannot be transmitted by pipeline over substantial distances at pressures exceeding 800 pounds because at such pressures the liquefiable hydrocarbons and water vapor in the gas tend to liquefy or freeze

at low temperatures. Deep South delivers gas at a pressure in excess of 800 pounds. Long distance interstate pipelines operate at pressures which begin at 800 pounds and may in some cases be considerably higher than 800 pounds. Any increase of pressure above 800 pounds will accentuate the difficulties arising from the presence in the gas of liquefiable hydrocarbons and water vapor."

C. Deep South designates the following portion of the record in support of its exception and proposed additional finding:

Wade, 139-141, 145;

Miller, 296-297;

Exs. 6, 19-20, 36;

Item E;

Decision, pp. 11-12.

Exception X.

A. Deep South excepts to the failure of the Examiner to find that unprocessed gas as it is sold by Deep South from its leases is not suitable for ordinary use as commercial or domestic fuel.

B. Deep South further excepts to the statement of the Examiner on page 137 of the decision that:

"* * * the principal components of gas from gas wells are the same as the principal components of gas used by its ultimate consumer."

C. Deep South further excepts to the implication of the Examiner at pages 168 and 169 of the Decision and at pages 175 and 176 of the Decision that the gas sold by Deep South to United Gas Pipe Line Company and by Deep South to Texas Gas Corporation is merchantable for ordinary use as fuel.

D. The ground for the exceptions set forth in paragraphs A, B and C above is that the record shows that unprocessed gas as it is sold by Deep South from its leases is not suitable for use as commercial or domestic fuel. In connection with these exceptions Deep South proposes the following additional or substitute finding:

"The gas sold by Deep South from its leases contains ethane and methane as its principal components but it also contains liquefiable hydrocarbons which render it unfit for ordinary use as commercial or domestic fuel. Although the gas sold by Deep South from its leases is merchantable gas in the sense that it is suitable for processing, it is not merchantable gas in the sense that, without further processing, it is suitable for ordinary use as commercial or domestic fuel."

E. Deep South designates the following portions of the record in support of its exceptions and proposed additional or substitute finding:

Miller, 298-301;

Williams, 225-228;

Exs. 19-20, 36;

Decision, p. 12.

Exception XI.

A. Deep South excepts to the statement of the Examiner on page 145 of the Decision that the volume of gas produced by chemical change in the Winnie plant of the Texas Gas Corporation "is not disclosed and must not be significant."

B. The ground for the exception made in the preceding paragraph is that the record in fact discloses the volume of gas produced by chemical change in the Winnie plant of the Texas Gas Corporation. In connection with the exception set forth by Deep South in the preceding paragraph, Deep South proposes the following additional finding:

"Gas similar to the natural residue gas obtained from the processing of gas well gas is produced in the Winnie plant of the Texas Gas Corporation in the cycle reversion unit which is located in that plant. This cycle reversion unit operates during approximately 94% of the time. While this cycle reversion unit is operating it produces by chemical process between one million cubic feet and two and one-quarter million cubic feet per day."

C. Deep South designates the following portion of the record in support of its exception and proposed additional finding:

Miller, 281-282.

Exception XII.

A. Deep South excepts to the following statement on page 179 of the Decision insofar as it applies to Deep South:

"'Any other sale' under petitioners' interpretation of the language appears to mean any sale prior to and other than the sale which results directly in the delivery of the natural gas into [13] the pipeline of the interstate transmission line. Based upon that interpretation of the Act, petitioners contend that in order for their sales to be subject to the regulation of the Commission they must be found to be made directly into the stream of interstate commerce; and, that consequently, a sale made prior to such ultimate sale and delivery into the interstate pipeline, even though one of a series of sales which eventuate therein, is not subject to the Commission's jurisdiction."

B. The grounds of the exception are as follows: The Examiner's statement does not accurately describe the arguments made by Deep South with respect to its sales. Deep South has not at any time asserted the broad proposition that a sale can never be regarded as a sale "in" interstate commerce unless delivery is made directly into an interstate transmission line. Deep South does contend that the question whether particular sales are "in" interstate commerce turns upon all of the relevant circumstances relating to those sales and that whether delivery is made into an interstate transmission line is one of

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"[13] That contention would seem to produce the same result as the earlier one that the Phillips decision does not go beyond that single, narrow point."

several relevant circumstances which should be taken into account in determining the status of a sale. Deep South further contends that all of the relevent circumstances as disclosed by the undisputed facts of record, show that the sales of gas made by Deep South are not sales "in interstate commerce for resale" and hence are not subject to regulation under the statute. For a fuller statement of Deep South's contentions with respect to this point the Commission is respectfully referred to the brief submitted by Deep South in support of these exceptions.

Exception XIII.

A. Deep South excepts to the following portion of the Decision appearing in the first paragraph on page 156 insofar as it applies to Deep South:

"The uncertainty as to status which occasioned the filing by petitioners of their several petitions arose out of the issuance by the Commission of its Order No. 174 (and the successors thereto). That order, in turn, was necessitated by the practical considerations arising from the decision of the United States Supreme Court on June 7, 1954 in Phillips Petroleum Company v. Wisconsin, et al., 347 U.S. 672. We are not called upon here, however, to deal with the question of validity of order No. 174, but rather with the question whether the jurisdictional status of the petitioners is such as to require their compliance with such order."

B. The Examiner states in the portion of the Decision to which exception has been taken that the Examiner is not called upon in this proceeding to deal

with the question of validity of Order No. 174 except insofar as the question of jurisdiction of the Federal Power Commission has been raised. Deep South has never conceded the validity of Order No. 174 and excepts to the statement of the Examiner on this ground.

Exception XIV.

A. Deep South excepts to the following portion of the Decision appearing on page 159 insofar as it applies to Deep South:

"And that, from a strict legal interpretation of the decision, decided the Phillips case. Counsel for petitioners proceed from that orthodox-legal concept to the easy conclusion that the Phillips decision decides nothing that is controlling in this proceeding. If that conclusion were as realistically as it is technically sound, there would probably have been no Order No. 174, and, consequently, no uncertainty concerning the status of the petitioners."

B. In the portion of the Decision to which exception has been taken the Examiner appears to argue that the Phillips decision is applicable here because of the existence of Order No. 174 and the existence of admitted uncertainties with respect to the status of petitioners.

Deep South excepts to this analysis and to any suggestion that the Phillips decision is controlling here or that Order No. 174 is any evidence of its own validity or of jurisdiction on the part of the Federal Power Commission to issue such an order.

Exception XV.

A. Deep South excepts to the following statement on page 186 of the Decision insofar as it applies to Deep South.

"The Federal Power Commission has never, of course, undertaken to regulate or tax the physical activities, facilities or properties used in the production and gathering of natural gas."

B. The ground for the exception made by Deep South in the preceding paragraph is that the regulation which would be imposed upon the operations of Deep South by the reasoning of the Examiner in his Decision would regulate matters so necessarily and closely related to the physical activities, facilities or properties used in the production and gathering of natural gas that such regulation would in fact be a regulation of production and gathering itself.

Exception XVI.

A. Deep South excepts to the portion of the Decision which begins on page 182 with the words:

"In support of the contention that the sales made by petitioners are not sales in 'interstate' but in 'intrastate' commerce and that they are not therefore subject to the jurisdiction of the Commission, counsel for petitioners cite a large number of cases * * * "

and continues through the sentence on page 185 which states that

"But in every one of the cases cited there had been action by the State and the proceedings, in each instance, were to determine whether the State had gone further than it should have in the exercise of its authority to tax or regulate. No situation analogous to that is present in this proceeding."

B. The grounds of this exception are as follows: It was error for the Examiner to conclude that the cases cited by Deep South were not relevant or in point for the purpose of determining the issues in this proceeding. The cases cited by Deep South were cases in which the Courts distinguished between transactions "in" interstate commerce, on the one hand, and transactions "in" intrastate commerce on the other, and in doing so laid down criteria which are applicable in the instant case. In a number of the cases cited by Deep South the Courts held that transactions similar in all significant respects to the sales of gas made by Deep South were not transactions "in" interstate commerce. The fact that the cited cases related to the constitutional authority of the states to tax or to regulate does not impair or qualify their authority on the point of what kinds of transactions are "in" interstate commerce. The cases cited by Deep South were relevant and should have been accepted and applied by the Examiner. Those decisions, as applied to the undisputed facts of record, require the conclusion that the sales made by Deep South are not sales "in" interstate commerce.

C. In support of this exception Deep South relies upon the following authorities:

Missouri v. Kansas Natural Gas Company, 265 U.S. 298 (1924);

Public Utilities Commission v. Attleboro Steam & Electric Co., 273 U.S. 83 (1927);

Oliver Iron Mining Co. v. Lord, 262 U.S. 172 (1923);

Utah Power & Light Co. v. Pfost, 286 U.S. 165 (1932);

Chassaniol v. Greenwood, 291 U.S. 584 (1934);

Superior Oil Company v. Mississippi, 280 U.S. 390 (1930);

Lemke v. Farmers Grain Co., 258 U.S. 50 (1922);

Coe v. Errol, 116 U.S. 517 (1886);

Parker v. Brown, 317 U.S. 341 (1943);

Baltimore & O. R. Co. v. United States, 15 F. Supp. 674 (N.D.N.Y. 1936);

Arkadelphia Milling Co v. St. Louis Southwestern Ry. Co., 249 U.S. 134, (1919);

Shafer v. Farmers Grain Co., 268 U.S. 189 (1925);

Champlain Realty Co. v. Brattleboro, 260 U.S. 366 (1922);

Crescent Oil Company v. Mississippi, 257 U.S. 129 (1921);

Empresa Siderurgica, S.A., et al., v. County of Merced, et al., 337 U.S. 154 (1949);

Spaulding & Bros. v. Edwards, 262 U.S. 166 (1923);

Richfield Oil Corp. v. State Board, 329 U.S. 69 (1946);

Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157 (1954).

Exception XVII.

A. Deep South excepts to the following statement on page 188 of the Decision insofar as it applies to Deep South:

"It must be concluded, therefore, that in those instances in which a state or state commission exercises no control, regulation or limitation upon or over the price of gas at the well head, a sale of gas produced therefrom which results in the delivery thereof into a stream of commerce in which gas produced at a point in one state is transported and sold at a point outside thereof is a sale in interstate commerce of natural gas for resale within the meaning of the Natural Gas Act, whether, before, or after, such sale there shall be extracted therefrom liquid hydrocarbons and impurities, and whether such gas shall have been dehydrated, compressed or otherwise similarly processed."

B. Deep South excepts to this portion of the decision on two grounds:

1. To the extent that the Examiner's statement is intended to assert that Deep South sells and delivers gas "into a stream of commerce in which gas produced at a point in one state is transported and sold at a point outside thereof" the statement is not supported by the record and is contrary to the evidence.*

2. It was error for the Examiner to conclude that the choice made by a state not to control or to regulate or to attempt to control or to regulate the price of gas at the wellhead is in itself a relevant consideration in determining whether a sale of gas at the wellhead is a sale "in" interstate commerce.

C. Deep South designates the following authorities in support of its exception;

Natural Gas Act of 1938;

Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672 (1954);

Missouri v. Kansas Natural Gas Co., 265 U.S. 298 (1924);

Public Utilities Commission v. Attleboro Steam & Electric Co., 273 U.S. 83 (1927).

Exception XVIII.

A. Deep South excepts to the following statement on page 178 of the Decision insofar as it applies to Deep South:

* See Exception VIII, above.

"In connection with the contention that these sales of gas are for 'manufacture' and not in interstate commerce and therefore not subject to the jurisdiction of the Commission under the Act it is appropriate to note the words of the Supreme Court in Mandeville Island Farms, Inc., et al., v. American Crystal Surgar [sic] Company, 334 U.S. 219 (1948):

" '* * * The artificial and mechanical separation of "production" and "manufacturing" from "commerce" without regard to their economic continuity, the effects of the former two upon the latter, and the varying methods by which the several processes are organized, related and carried on in different industries, or indeed within a single industry, no longer suffices to put either production or manufacturing and refining processes beyond the reach of Congress or of the statute.' "

B. Deep South further excepts to the following statement on page 186 of the Decision insofar as it applies to Deep South:

"Relative to the question here in issue, it appears pertinent to quote the language of the Supreme Court in Mandeville Island Farms, Inc., v. American Crystal Sugar Co., supra:

" 'The Shreveport doctrine cut Congress loose from the haltering labels of "production" and "manufacturing" and gave it rein to reach those processes when they were used to defy its purposes regarding interstate trade and commerce. In doing so the decision substituted judgment as to practical impeding

effects upon the commerce for rubrics concerning the boundaries, as the basic criterion of effective congressional action.' "

C. The grounds of this exception, set forth in paragraphs A and B above, are as follows: Mandeville Island Farms, Inc. v. American Crystal Sugar Co., 334 U.S. 219 (1948), is a decision in which the Supreme Court interpreted and applied the Sherman Antitrust Act. That statute has been construed as applying to intrastate transactions which affect or burden interstate commerce. Decisions under that statute are therefore not relevant in construing the Natural Gas Act which is limited to transactions "in" interstate commerce and was not intended to impose regulation to the full limit of congressional authority.

D. In support of these exceptions Deep South relies upon the following authorities:

Local 167 v. United States, 291 U.S. 293 (1933);

Schechter Corp. v. United States, 295 U.S. 495 (1935);

Federal Trade Commission v. Bunte Brothers, Inc., 312 U.S. 349 (1941);

Federal Power Commission v. Panhandle Eastern Pipe Line Co., 337 U.S. 498 (1949).

Exception XIX.

A. Deep South excepts to the following statement on page 182 of the Decision insofar as it applies to Deep South:

"In these proceedings the petitioners have asked for an interpretation of their status which interpretation would, they expect, exclude them from the Commission's jurisdiction. It seems to me that in such case the burden in each instance should be upon the petitioner to prove that he does not come within the purview of the Act rather than upon the Staff to prove that he does. It is recognized that the evidence upon which conclusive findings on those points could be made was not readily available to petitioners. That, however, would not relieve petitioners of the responsibility of exhausting such means as were at their command to reveal the relevant facts. Under the circumstances it must be concluded that in such a proceeding as this is, as distinguished from the usual one, inferences least favorable to the petitioners must be drawn from the evidence in the record on certain points."

B. The ground of this exception is that the evidence in this case establishes that the sales made by Deep South are not sales "in" interstate commerce and accordingly are not subject to regulation under the Natural Gas Act; nothing in the record justifies any inference inconsistent with or adverse to this evidence.*

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* See Exceptions I-X, above.

Exception XX.

A. Deep South excepts to the following statements on page 189 of the Decision insofar as they apply to Deep South:

"But it is not believed that one who sells and delivers gas into an interstate stream of commerce can alter or otherwise affect the nature of that flow by pleading indifference to, or indifferent knowledge of, the destination thereof, nor can he avoid, thereby, the regulation and control of so much of that stream as is contributed by him.

* * * * * * * *

"A similar conclusion must be reached with respect to Shell's sales from the McElroy Field [16] and Deep [17] South's sales from the Refugio Field."

B. The grounds for this exception are as follows: Insofar as the statement of the Examiner asserts that Deep South "sells and delivers gas into an interstate stream of commerce" the statement is not supported by the record and is contrary to the evidence.* It was also error for the Examiner to conclude that all considerations relating to Deep South's knowledge, intent and purpose are irrelevant in determining whether the sales are "in" interstate commerce. The knowledge, intent and purpose of a seller with respect to

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[16] All of the residue of which appears to be sold and deliver to El Paso.

[17] Inferred from the evidence as explained above."

* See Exception VII above.

the ultimate destination of the product sold are relevant circumstances which may be considered in determining whether a particular sale is "in" interstate commerce. It was also error for the Examiner to conclude that the sales of gas made by Deep South should be regarded as sales "in" interstate commerce unless Deep South could prove conclusively that no part of the gas sold by it is ever transported beyond the limits of Texas.

C. In support of this exception Deep South cites the following authorities:

Superior Oil Company v. Mississippi, 280 U.S. 390 (1930);

Empresa Siderurgica, S.A., et al., v. County of Merced, et al., 337 U.S. 154 (1949).

D. In lieu of the portions of the Decision to which exception is taken in paragraph A above Deep South proposes the following additional or substitute findings and conclusions:

"Deep South has no control over the disposition of the gas sold by Deep South from its leases. At the time that Deep South made arrangements for the sale of gas from its leases it did not make those arrangements with the intent or purpose that the gas should be transported in interstate commerce. The record shows that when the gas is delivered by Deep South at its leases the actual destination of the gas is not and cannot be known by Deep South."

E. In support of the proposed additional finding Deep South designates the following portions of the record:

Jones Sr., 184-189, 192, 205, 209;

Jones Jr., 327-337, 340-346.

Exception XXI.

A. Deep South excepts to the following statements on page 191 of the Decision insofar as they apply to Deep South:

"But under such circumstances it is not believed necessary that there be proved that the gas of these producers is the gas which is transported and sold in interstate commerce. To so require would make it possible to avoid with ease the regulation of such sales for resale. Federal jurisdiction is not believed to rest on so tenuous a foundation.[18]

"It is concluded, therefore, that the sales of gas here under consideration, and each of them, made by the petitioners herein, respectively, are sales in interstate commerce of natural gas for resale within the purview of the Natural Gas Act. Consequently, it is concluded that the petitioners, and each of them, is engaged in the sale in interstate commerce of natural gas for resale, and is, therefore, a natural-gas company within the meaning of the Act. The prayer of such petitioners respectively for an order declaring

"[18] cf. Jersey Central Power and Light Co. v. Federal Power Commission, 319 U.S. 61."

that its such sales are not subject to regulation under the provisions of the Natural Gas Act and that the petitioners, respectively, are not natural-gas companies within the meaning of the Act by reason of such sales, must be and is, therefore, denied."

B. The ground of this exception is that the statements to which exception is taken are not supported by the record, are contrary to the evidence, and are contrary to law.

C. In lieu of the portion of the Decision to which exception has been taken in paragraph A, Deep South proposes the following:

"The record shows that at the time gas is delivered by Deep South from its leases, that gas is not earmarked for or committed to interstate movement; it is impossible at the time of such delivery to ascertain the ultimate destination of the gas, whether in Texas or outside of Texas. The sales of gas made by Deep South are sales in intrastate commerce and are not sales in interstate commerce within the meaning of the Natural Gas Act. Consequently, it is concluded that Deep South is not a natural gas company within the meaning of the Act and is not subject to regulation under the provisions of that Act."

D. In support of its exception and proposed additional finding Deep South designates the following authorities:

Natural Gas Act of 1938;

Federal Trade Commission v. Bunte Brothers, Inc., 312 U.S. 349 (1941);

Fair Labor Standards Act of 1938, Act of July 25, 1938, 52 Stat. 1060;

National Labor Relations Act, Act of July 5, 1935, 49 Stat. 449;

Bituminous Coal Act of 1937, Act of April 26, 1937, 50 Stat. 72;

Packers and Stockyards Act, Act of August 13, 1921, 42 Stat. 159;

Missouri v. Kansas Natural Gas Company, 265 U.S. 298 (1924);

Public Utilities Commission v. Attleboro Steam & Electric Co., 273 U.S. 83 (1927);

Schechter Corp. v. United States, 295 U.S. 495 (1935);

Oliver Iron Mining Co. v. Lord, 262 U.S. 172 (1923);

Utah Power & Light Co. v. Pfost, 286 U.S. 165 (1932);

Chassaniol v. Greenwood, 291 U.S. 584 (1934);

Superior Oil Company v. Mississippi, 280 U.S. 390 (1930);

Lemke v. Farmers Grain Co., 258 U.S. 50 (1922);

Coe v. Errol, 116 U.S. 517 (1886);

Parker v. Brown, 317 U.S. 341 (1943);

Baltimore & O. R. Co. v. United States, 15 F. Supp. 674 (N.D.N.Y. 1936);

Arkdelphia Milling Co. v. St. Louis Southwestern Ry. Co., 249 U.S. 134 (1919);

Shafer v. Farmers Grain Co., 268 U.S. 189 (1925);

Champlain Realty Co. v. Brattleboro, 260 U.S. 366 (1922);

Crescent Oil Company v. Mississippi, 257 U.S. 129 (1921);

Empresa Siderurgica, S.A., et al. v. County of Merced, et al., 337 U.S. 154 (1949);

Spaulding & Bros. v. Edwards, 262 U.S. 166 (1923);

Richfield Oil Corp. v. State Board, 329 U.S. 69 (1946);

Michigan-Wisconsin Pipe Line Co. v. Calvert 347 U.S. 157 (1954);

Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672 (1954);

Interstate Natural Gas Co. v. Federal Power Commission, 331 U.S. 682 (1947);

Peoples Natural Gas Co. v. Federal Power Commission, 127 F. 2d 153 (D.C. Cir. 1942), cert. den., 316 U.S. 700 (1942);

Miller, 265-266, 283-289, 292-293, 308-313;

Jones Sr., 191-192, 205;

Jones Jr., 327-340, 569;

Williams, 245-246;

Exs. 6, 16, 21, 22, 33-35;

Item C, 126, 132-134, 145-146, 152-154, 159-169;

Item E;

Decision of the Examiner, pp. 9, 15, 58.

Exception XXII.

A. Deep South excepts to the following statement on page 179 of the Decision insofar as it applies to Deep South:

"It is concluded that the sales of gas, including casinghead gas, by the petitioners herein are sales in interstate commerce for resale, or such other purpose as the purchaser may choose. Actually the purchaser chooses in each instance to remove from the gas certain components from which the purchaser manufactures natural gasoline and other products. However, nothing is manufactured from the residue gas and it is resold in interstate commerce."

B. Deep South further excepts to the following statement on page 188 of the Decision insofar as it applies to Deep South:

"It must be concluded, therefore, that in those instances in which a state or state commission exercises no control, regulation or limitation upon or over the price of gas at the well head, a sale of gas produced therefrom which results in the delivery thereof into a stream of commerce in which gas produced at a point in one state is transported and sold at a point outside thereof is a sale in interstate commerce of natural gas for resale within the meaning of the Natural Gas Act, whether, before, or after, such sale there shall be extracted therefrom liquid hydrocarbons and impurities, and whether such gas shall have been dehydrated, compressed or otherwise similarly processed."

C. Deep South further excepts to the following statement on page 191 of the Decision insofar as it applies to Deep South:

"It is concluded, therefore, that the sales of gas here under consideration, and each of them, made by the petitioners herein, respectively, are sales in interstate commerce of natural gas for resale within the purview of the Natural Gas Act. Consequently, it is concluded that the petitioners, and each of them, is engaged in the sale in interstate commerce of natural gas for resale, and is, therefore, a natural-gas company within the meaning of the Act. The prayer of such petitioners respectively for an order declaring that its such sales are not subject to regulation under the provisions of the Natural Gas Act and that the

petitioners, respectively, are not natural-gas companies within the meaning of the Act by reason of such sales, must be and is, therefore, denied.

D. The ground of the exceptions set forth in paragraphs A, B and C above is that the statements to which exception is taken are not supported by the record, are contrary to the evidence, and are contrary to law.

E. In lieu of the portions of the Decision to which exception has been taken in paragraphs A, B and C above, Deep South proposes the following findings and conclusions:

"The sales of gas made by Deep South are sales for processing rather than sales for resale within the meaning of the Natural Gas Act. Until the gas sold by Deep South is processed it is not fit either for transportation over any substantial distance by pipeline or for any ordinary use as fuel. The processing to which the gas sold by Deep South is subjected following such sale effects a fundamental change in the commodity sold by Deep South. Consequently, Deep South is not engaged in the sale of gas for resale within the meaning of the Natural Gas Act and is therefore not a 'natural gas company' and not subject to regulation under the provisions of that Act."

F. In support of its exceptions and proposed findings and conclusions, Deep South designates the following authorities and portion of the record:

Natural Gas Act of 1938;

Federal Trade Commission v. Bunte Brothers, Inc., 312 U.S. 349 (1941);

Chassaniol v. Greenwood, 291 U.S. 584 (1934);

Parker v. Brown, 317 U.S. 341 (1943);

Baltimore & O. R. Co. v. United States, 15 F. Supp. 674 (N.D.N.Y. 1936);

Arkadelphia Milling Co. v. St. Louis Southwestern Ry. Co., 249 U.S. 134 (1919);

Crescent Oil Company v. Mississippi, 257 U.S. 129 (1921);

Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672 (1954);

Interstate Natural Gas Co. v. Federal Power Commission, 331 U.S. 682 (1947);

Wade, 139-141, 145;

Miller, 296-301;

Williams, 225-228;

Exs. 6, 19-20, 36;

Item E;

Decision, pp. 11-12.

Exception XXIII.

A. Deep South excepts to the following conclusion on page 38 of the decision:

"Thus, it must be concluded for the purposes of regulation under the Natural Gas Act the gas sold by the several petitioners herein is 'natural gas' within the meaning of that Act."

B. The grounds of this exception are that the conclusion of the Examiner is not supported by the record, is contrary to the evidence, and is contrary to law.

C. Deep South designates the following authorities and portions of the record in support of its exception:

Natural Gas Act of 1938;

Miller, 298-301;

Williams, 225-228;

Exs. 19-20, 36;

Decision, p. 12.

Exception XXIV.

A. Deep South excepts to the portion of the Decision that begins with the second paragraph on page 160 and continues to the subtitle "Sales of 'Natural Gas' " on page 165, insofar as it applies to Deep

B. In lieu of the portion of the Decision to which exception has been taken in paragraph A, Deep South proposes the following:

"The operations of Deep South, including its sales of gas, are covered by the provision of Section 1(b) of the Natural Gas Act which provides that the statute shall not apply to the 'production or gathering' of natural gas. Sales made by Deep South are made at the head of the well from which gas is produced and the sale is made in every instance before the gathering process has begun. In the light of these facts, decisions relating to sales after gathering and processing are wholly distinguishable from the case at bar. The statutory language exempting 'production or gathering' of natural gas makes it clear that the Commission has no authority to regulate directly or indirectly the physical operation of production or gathering or the physical facilities or properties used therein. The sales made by Deep South are so closely related to the physical activity of facilities and production that extension of the provisions of the statute to those sales would necessarily involve regulation of the physical activity and facilities of production. A determination that Deep South is a natural gas company within the scope of the Natural Gas Act would necessarily subject Deep South's producing facilities to the provisions of the statute which relate to certificates of convenience and necessity and possibly to other regulatory provisions of the statute, thus directly regulating the physical activity and facilities of production. This interpretation and application of the Act is not required or sanctioned by any of the relevant decisions of the Supreme

Court and is inconsistent with the plain meaning of Section 1(b).

C. In support of its exception and proposed additional or substitute finding of fact, Deep South designates the following authorities:

Natural Gas Act of 1938;

Federal Power Commission v. Panhandle Eastern Pipe Line Co., 337 U.S. 498 (1949);

Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672 (1954);

Interstate Natural Gas Co. v. Federal Power Commission, 331 U.S. 682 (1947).

Exception XXV.

Deep South proposes that the Commission enter an order herein as follows:

"It is hereby ordered:

(a) That petitioner's sales of natural gas to Texas Gas Corporation are not subject to regulation under the provisions of the Natural Gas Act.

(b) That petitioner's sales of natural gas to the United Gas Pipe Line Company are not subject to regulation under the provisions of the Natural Gas Act.

(c) That petitioner is not a 'natural gas company' within the meaning of the Natural Gas Act.

(d) That petitioner is not subject to the provisions of Order No. 174-B."

Respectfully submitted,

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May 25, 1955.

* * * * * * * *

EXCEPTIONS OF SHELL OIL COMPANY TO THE DECISION OF THE PRESIDING EXAMINER AND BRIEF IN SUPPORT OF EXCEPTIONS.

Received May 25, 2:24 P.M. '55.

United States of America.

Federal Power Commission.

In the Matter of:

Shell Oil Company.

Docket No. G-4671 (Consolidated with Docket No. G-2952).

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Exceptions of Shell Oil Company to the Decision of the Presiding Examiner and Brief in Support of Exceptions.

Received May 25, 2:24 P.M. '55.

United States of America,

Federal Power Commission.

In the Matter of:
Shell Oil Company.

Docket No. G-4671 (Consolidated with Docket No. G-2952).

Preliminary Statement.

Shell Oil Company (Shell) requests the Commission to consider as its brief in this matter its original brief filed prior to the decision of the Presiding Examiner, as said brief is supplemented herein by the reasons in support of the following exceptions to the decision of the Presiding Examiner. As stated in our original brief, we are not rearguing the case of *Phillips Petroleum Co. v. Wisconsin*, et al., 347 U. S. 672, nor the applicability of the production and gathering exemption of the Natural Gas Act (the Act) to the instant sales.

Exceptions to the Decision of the Presiding Examiner.

Shell excepts to the conclusions reached by the Presiding Examiner that (1) Shell's sales involved in this proceeding constitute sales of natural gas in

interstate commerce for resale within the meaning of the Act, (2) the casinghead gas sold by Shell is the same product as the residue gas which the plant operator sells to the interstate pipe line company, and (3) Shell's sales are not for manufacture but for resale. In particular, Shell excepts to:

1. The statement on page 21, lines 20-21, that the casinghead gas is to be delivered by Shell in the Nome Field at a central point in the field. The contract (Exhibit 8) and page 88 of the record show that Shell has exercised its option to deliver casinghead gas at the outlet of the separators.

2. The statement that "there is no evidence in the record that interstate pipe lines were then (referring to 1938) operated at high pressure or that the gas then transmitted in interstate lines consisted almost entirely of ethane and methane. Nor would it be proper to assume that those were the facts," appearing in the last paragraph, page 34. These statements assume the necessity of proving as facts matters which are within the general knowledge of the Commission and which are established in the legislative history of the Natural Gas Act and also settled by decisions of the United States Supreme Court. See Point III, *infra*.

3. The statement appearing in the last paragraph, page 35, that "the two most important steps needed to make the gas suitable for transportation in high-pressure pipe lines is performed by the company to which Phillips sells the gas." This statement is not supported by substantial evidence. Removal of liquid hydrocarbons, an essential step to the transporta-

tion and use of the gas as fuel, is performed by Phillips in the absorption process which takes place in its plant (pages 39, 65, 66, 68, 69, 138, 139, 149 of record).

4. The last sentence, first paragraph, page 38, reading: "Throughout all those changes the 'natural gas' flows continuously and without interruption, first with, and later without, those impurities and other components, through the interconnected pipe lines, including those which actually cross state boundaries, to the burner tips of the consumers thereof." The conclusion that the gas flows continuously and without interruption is without support in the evidence, is contrary to uncontradicted evidence (See Point I (c), *infra*).

5. The conclusion in the second paragraph, page 38, that the gas sold by Shell is "natural gas" within the meaning of the Act. This conclusion is contrary to the evidence and to the law. (See Point III, *infra*).

6. The omission of the Examiner to find, in accordance with the undisputed evidence, that Shell receives more from Phillips for the liquids extracted from the casinghead gas than Shell received as additional consideration attributable to residue gas (page 43 of record, and Exhibit 4).

7. The statement appearing in the first paragraph, page 41, reading: "It seems clear, therefore, that the purpose of the sale of gas by the original Seller (referring to Shell) was not in any sense intended as a limitation or restriction to use for purposes of 'manufacture'." This conclusion is con-

trary to law and in direct conflict with the express purpose of the sale which is clearly stated in the contract under which Shell sells the casinghead gas to Phillips (Exhibit 2 and II, *infra*).

8. The last sentence of the first paragraph, page 41, reading: "Furthermore, to say that after the sale and delivery of the gas by Shell to Phillips the former no longer has any control over it, appears, in the light of all of the provisions of the contracts and its supplements, to be not without some doubt." This statement is without evidentiary support and is pure conjecture and speculation. It is in direct conflict with uncontradicted evidence that upon the sale and delivery of the gas by Shell to Phillips, Shell parts with all title to and control of the casinghead gas. (See pages 41, 44, 61 and 69 of the record, and paragraph 2 of Exhibit 2.) This statement is also in conflict with a later conclusion by the Examiner (page 180 of his decision) that "the evidence shows conclusively that the sales and deliveries of natural gas by each of the petitioners is made on or close to the lease. . . and that thereafter the producer of the gas had no further ownership or control over it." (See also pages 41, 52, 60 and 61 of the record.)

9. The statement beginning at the bottom of page 41 and continuing onto page 42, (Printed Page 174) reading: "It must be assumed that Shell has been aware of the sales of residue gas by Phillips to El Paso on every anniversary of the date of the contract since the beginning of such deliveries on July 17, 1950, and by continuing rather than terminating the contract, it has tacitly, at least, joined in such sale." This conclusion is without evidentiary support and is contrary

to law. The casinghead gas contract (Exhibit 2) gives Phillips, the purchaser, the option, without the obligation, to sell residue gas. That contract is an accomplished agreement which speaks for itself. The fact that a seller does not exercise an option to cancel a contract of sale is no evidence that he is a party to the sale of a by-product resulting from a manufacturing process undergone by the basic commodity (casinghead gas) which he sells. (See Point II, *infra.*)

10. The first full paragraph page 42, reading: "In any event the determination of the question whether the gas is sold for manufacture must rest upon the actual disposition of the case today rather than upon the now anomalous provision of a contract entered into under wholly different conditions." This conclusion is contrary to the law and to the evidence. The casinghead gas contract explicitly states that the casinghead gas is being sold for the purpose of manufacture. If the purchaser under that contract does not subject the gas to a manufacturing process for the extraction of gasoline or other products, he thereby breaches the essential condition of the sale. Shell, as seller under this contract, has nothing to do with the disposition of the residue gas. Nor is Phillips obligated to sell the residue gas. Furthermore, the uncontradicted evidence shows that Shell receives more money for the liquids extracted from the casinghead gas than it receives as payment based upon residue gas sold by Phillips. (See Point II, *infra.*)

11. The last paragraph page 46 reading: "It is concluded that the sales of gas, including casinghead gas, by the petitioners herein are sales in interstate

commerce for resale, or such other purpose as the purchaser may choose. Actually the purchaser chooses in each instance to remove from the gas certain components from which the purchaser manufactures natural gasoline and other products." This conclusion is contrary to the law and the evidence. The purchaser of the casinghead gas from Shell does not "*choose*" to remove the liquid hydrocarbons, he is *obligated* to do so by the contract.

12. The statement in the second paragraph page 48 that: "There is a constant uninterrupted flow of gas from the wellhead through the flow lines, the separators, the gathering lines where the gas is commingled with gas from other producers, the gasoline plants, the compressing, dehydrating and desulphurizing equipment, into interstate transmission lines". This conclusion is contrary to the evidence. It completely disregards the intricate manufacturing process which the casinghead gas undergoes before a resulting by-product, residue gas, is fit for use as fuel and for transportation in high-pressure pipe lines. (See pages 39, 65, 66, 68, 138, 139, 149 and 150 of the record.)

13. The last sentence first paragraph page 49 that: "The gas thus produced by Deep South and by Shell, therefore, flows in a continuous and uninterrupted stream from the point of production in the State of Texas to the point of consumption in another State." This conclusion is contrary to the evidence and completely disregards the preliminary gathering and processing before the residue gas starts on the interstate journey.

14. The conclusions set forth on page 50 wherein the Examiner completely disregards, without legal basis, a firmly established rule of law announced in *Coe vs. Errol,* 116 U. S. 517, decided in 1886, and applied through the years to and including *Michigan-Wisconsin Pipe Line Company vs. Calvert,* (1954) 347 U. S. 157.

15. The statement appearing in the second paragraph page 52 reading: "But in everyone of the cases cited (referring to the decisions cited in our original brief) there had been action by the State and the proceedings, in each instance, were to determine whether the state had gone further than it should have in the exercise of its authority to tax or regulate." This statement disregards *U. S. v. Yellow Cab Co.,* 332 U. S. 218 discussed in our original brief at pages 19-20. That case dealt with the attempted application of the Sherman Act to the transportation of passengers by taxicab to and from railroad stations. The Court held that such transportation was *intrastate* commerce and hence not reached by the Sherman Act.

16. The first paragraph page 55 in which the Examiner concludes that the "gap" which Congress intended to close by passing the Natural Gas Act, extends all the way back to the wellhead. This conclusion is contrary to the law. (See Point I(a), *infra.*)

17. The sweeping effect which the Presiding Examiner gives to the Court's dicta in the *Phillips* case (347 U. S. 672) at pages 157-165, 187-188 of his decision. That opinion dealt *only* with sales conceded to be in interstate commerce. It did not change the Act

from one of limited Congressional assertion of power under the commerce clause to an unlimited exercise of that power.

18. The second to last paragraph page 188 reading: "It must be concluded, therefore, that in those instances in which a state or state commission exercises no control, regulation or limitation upon or over the price of gas at the wellhead, a sale of gas produced therefrom which results in the delivery thereof into a stream of commerce in which gas produced at a point in one state is transported and sold at a point outside thereof is a sale in interstate commerce of natural gas for resale within the meaning of the Natural Gas Act, whether, before, or after, such sale there shall be extracted therefrom liquid hydrocarbons and impurities, and whether such gas shall have been dehydrated, compressed or otherwise similarly processed." This conclusion is contrary to law. It makes the test of interstate commerce depend not upon the facts and the law of each situation, but rather upon whether or not a given sovereignty has attempted to exercise control in a given case. Such an unrealistic approach to the concept of "interstate commerce" would make valid regulation depend not upon the true legal status of each transaction, but upon a "first come first served" basis.

19. The conclusions stated in the last paragraph page 57 and the last paragraph page 58 that Shell's sales in question "are sales in interstate commerce of natural gas for resale within the purview of the Natural Gas Act." This conclusion is contrary to law and to the uncontradicted evidence in this record.

In lieu of the findings and conclusions of the Presiding Examiner we submit that the evidence in this case and the applicable law require a finding that Shell's sales of gas involved in this proceeding are not sales in interstate commerce of natural gas for resale within the meaning of the Natural Gas Act, but constitute local, intrastate transactions not covered by the Act.

Argument and Reasons in Support of Exceptions.

The reasons and authorities in our original brief amply demonstrate that Shell's sales are not sales in interstate commerce of natural gas for resale, hence they are not within the Natural Gas Act. In reaching the conclusion which he has, the Presiding Examiner fails to give effect to the decisions discussed in our original brief which are indistinguishable from the facts now before the Commission and which establish and consistently apply a principle of law which is directly applicable here.

While admitting that we are technically sound in our analysis of the decision of the Supreme Court in the case of *Phillips Petroleum Company vs. Wisconsin et al.* (1954) 347 U. S. 672, the Presiding Examiner seems to conclude that the only realistic interpretation of that decision is that it not only limits the production and gathering exemption of section 1(b) of the Act to the physical activities, facilities and properties used in production and gathering, but that it also broadens and rewrites the affirmative coverage of the Act from its application to "the sale in interstate commerce" into some other language of broader import, and then wipes out the Act's exemp-

tion of "any other sale". But how that decision, which *deals solely* with the application of the production and gathering exemption to an admitted interstate sale, accomplishes these drastic changes, is not shown by the Presiding Examiner because, of course, not even the admitted dicta in that opinion goes to such extremes.

The Presiding Examiner bases his conclusion that Shell's sales are subject to the Act on these grounds:

1. The sales are not within the production and gathering exemption because that exemption encompasses only producing properties and gathering facilities.[1]

2. The casinghead gas which Shell sells at the separator is "natural gas unmixed" and is the same product as the residue gas which the plant operator sells to the interstate pipe line company and this casinghead gas must be considered to be suitable for public consumption and interstate transmission because "there is no evidence in the record that interstate pipe lines were then (in 1938) operated at high pressure or that the gas then (in 1938) transmitted in interstate lines consisted almost entirely of ethane and methane" (p. 34).

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[1] We do not agree with this conclusion but we have not argued the production and gathering exemption in our prior brief and we shall not argue it here. We are not waiving this point, but refrain from arguing it because others involved in this consolidated proceeding will cover it in the presentation of their case.

3. The sales are not for manufacture, but for resale.

4. After observing that "there is a constant uninterrupted flow of the gas from the wellhead. . . into interstate transmission line" (p. 48) and "so far as this record is concerned, in the absence of regulation by this Commission, the price of gas would be unregulated" (p. 53), and, " 'interstate commerce' as the term is used in the Act is, at least, coextensive with the 'gap' to which the Court referred" (p. 55), the Examiner concludes that the sales are "in interstate commerce" because:

"It must be concluded, therefore, that in those instances in which a state or state commission exercises no control, regulation or limitation upon or over the price of gas at the wellhead, a sale of gas produced therefrom which results in the delivery thereof into a stream of commerce in which gas produced at a point in one state is transported and sold at a point outside thereof is a sale in interstate commerce of natural gas for resale within the meaning of the Natural Gas Act, whether, before, or after, such sale there shall be extracted therefrom liquid hydrocarbons and impurities, and whether such gas shall have been dehydrated, compressed or otherwise similarly processed" (p. 55).

This conclusion is based squarely upon the following language which the Examiner quotes from the *Phillips* case but which, we submit, refutes the inference drawn from it. The language is:

"Regulation of the *sales in interstate commerce* for resale made by a so-called independent natural-gas producer is not essentially different from regulation of such sales when made by an affiliate of an interstate pipe line company. In both cases, the rates charged may have a direct and substantial effect on the price paid by the ultimate consumers. Protection of consumers against exploitation at the hands of natural-gas companies was the primary aim of the Natural Gas Act. * * * Attempts to weaken this protection by amendatory legislation exempting independent natural-gas producers from federal regulation have repeatedly failed and we refuse to achieve the same result by a strained interpretation of the existing statutory language." (Emphasis added.)

The very predicate upon which the Court rests its observation that the rates which Congress dealt with in the interest of the consumers, were the rates "of *the sales in interstate commerce*". But the primary question now under consideration is whether Shell's sales actually are "sales in interstate commerce".

To assume as the Examiner does that Shell's sales are "in interstate commerce" because the State of Texas happens not to be exercising control over them at this particular time (which admits, of course, that the State could do so if it desired) is, as we shall later show, an incorrect application of the "interstate commerce" doctrine, being at odds with the fundamental legal concept which governs the status of a transaction as to its interstate or intrastate character. Furthermore, such reasoning completely disregards the plain, clear words of the Act and fails to take into account the primary jurisdictional requisite of

the very language of the Supreme Court upon which the conclusion purports to be based.

The Facts.

The facts are set forth in detail in our original brief with references to the record supporting that statement of facts. In summary, the record establishes that in the McElroy Field, Shell sells and delivers casinghead gas to Phillips at the outlet of a field separator. This casinghead gas is delivered into one of Phillips' gathering lines and thereafter is commingled with gas from a great number of other wells in the field and is moved a distance of approximately five miles to the Crane Gasoline Plant which is owned and operated by Phillips. When the commingled mass of casinghead gas reaches the plant it passes through scrubbers, is compressed, and then undergoes an absorption process which converts the casinghead gas into liquid products and sour residue gas. The sour residue gas is sold by Phillips to El Paso which then treats the sour gas to remove hydrogen sulphide and carbon dioxide, after which the pressure of the gas must be increased before the residue can enter into an interstate transmission line.

At the time and place of the sale and delivery of casinghead gas by Shell to Phillips, this gas contains methane, ethane, high quantities of liquefiable hydrocarbons (natural gasoline, butane and propane), water vapor, and an exceptionally large content of hydrogen sulphide. At the point of delivery of the casinghead gas by Shell to Phillips, at which time title and exclusive control pass to Phillips, the casinghead gas is not suitable for public consumption

nor is it then fit for transportation in high-pressure lines which are used for transporting gas in interstate commerce. Before the casinghead gas in suitable for transmission in high-pressure interstate pipe lines, it must be dehydrated, treated for removal of hydrogen sulphide, processed for extraction of liquefiable hydrocarbons, and treated for the removal of incombustible material and impurities.

Shell is not a party to the sale of residue gas from Phillips to El Paso, nor did Shell take any part in the negotiation of that sale. Shell has no title to the residue gas. Shell receives more for the liquid products extracted from the casinghead gas than it receives as additional consideration attributable to the residue which Phillips sells to El Paso.

* * * * * * * *

We shall discuss the conclusions of the Presiding Examiner in reverse order from that in which they were treated in his decision.

Point I.

Shell's sales are in intrastate commerce—the Examiner erred in holding that they were sales in interstate commerce.

A. The Natural Gas Act Is an "In" Commerce, Not an "affecting" Commerce Statute.

"Interstate commerce" is, of course, a practical concept which must have a beginning and an end. But what is or what is not "interstate commerce",

whether approached from the practical, technical, or any other viewpoint, cannot be resolved by saying that interstate commerce depends upon whether in any given situation the State in which the sale happens to take place does or does not see fit to exercise control over the price. To reason that if the State exercises no control the activity is "interstate", from which would logically follow that if a State does exercise control the activity is intrastate, is putting the cart forward of the horse. "Interstate commerce" does not depend upon which of the two sovereigns chooses to regulate. On the contrary, the power to regulate depends upon, and does not create, the status of the activity as intrastate or interstate. If the former, as are Shell's sales involved in this proceeding—the States can regulate. See *Cities Service Gas Company* vs. *Peerless Oil and Gas Company*, 340 U. S. 179,[2] *Arkadelphia Milling Company vs. S. Louis S. W. R. Company* (1919), 249 U. S. 134, and the numerous cases cited and discussed in our original brief. Congress also has power to deal with *intrastate* activities to the extent that they *affect* interstate trade and commerce. But whether Congress exercises that power to its fullest extent, as it has done in the Sherman Act, the Fair Labor Standards Act, the Labor-Management Relations Act, and other "*affec-*

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[2] The recent case of *Natural Gas Pipe Line Company vs. Panoma Corporation*, decided by the Supreme Court on April 11, 1955, does not alter this conclusion. That case dealt only with an attempt by the State of Oklahoma to fix minimum prices for gas "*after its production and gathering has ended, by a company which transports the gas for resale in interstate commerce*".

ing" commerce statutes, or whether Congress chooses to limit the exercise of its power as it has in the Natural Gas Act, to sales "*in*" interstate commerce, is solely for the resolution of Congress. And when Congress invokes its power through the use of a restrictive rather than a broad statute, the Courts, and of course the Commission, are bound by that limitation. That is precisely what the Supreme Court held in the *Bunte Brothers* case (312 U.S. 349), discussed at page 14 of our original brief, but ignored by the Presiding Examiner. There the Court held:

"*When in order to protect interstate commerce Congress has regulated activities which in isolation are merely local, it has normally conveyed its purpose explicitly. . .*"

And the Court concluded:

"*This case presents the narrow question of what Congress did, not what it could do. And we merely hold that to read 'unfair methods of competition in (interstate commerce' as thought it meant 'unfair methods of competition in any way affecting interstate commerce', requires, in view of all the relevant considerations, much clearer manifestation of intention than Congress has furnished.*"

That is the crux of our position that Shell's sales are not covered by the Act. These sales, as the authorities cited in our original brief conclusively establish, are not sales "in interstate commerce". The Act applies *only* to those sales which are actually "in interstate commerce", and shall not apply to "any

other sales". Hence these sales are simply not covered.

We are not contending that Shell's sales might not have some effect upon interstate commerce. Perhaps they—like the sales of candy involved in the *Bunte Brothers* case—do have. But the Commission cannot convert "sale in interstate commerce" in section 1(b) of the Natural Gas Act into "sale in any way affecting interstate commerce", any more than the Supreme Court would make a similar conversion in the Federal Trade Commission Act in the *Bunte Brothers* case.

Nothing in the *Phillips* decision touches this point, and in this very realm of different Congressional action, lies the real distinction between the question involved here and the *Mandeville Island Farms* case, 334 U. S. 219, upon which the Presiding Examiner relies so heavily. It is undoubtedly true that production, manufacture, refining and processing are no longer completely beyond the reach of Congress if those activities affect or obstruct interstate commerce. When Congress exercises its power to the fullest extent under the commerce clause, as it did in the Sherman Act, the Court, as it did in the *Mandeville Island Farms* case, will recognize and enforce that assertion of power. But it is not lightly to be presumed that Congress always intends to regulate intrastate activities. And when Congress expressly limits the exercise of its power to transactions "*in*" rather than those which in any way "*affect*" interstate commerce, as it did in the Natural Gas Act and the Federal Trade Commission Act, the Court, as it did in the *Bunte Brothers* case, recog-

nizes the expressed limitation by Congress and will not judicially broaden the Congressional exercise of power.

The *Mandeville Island Farms* case [bearing in mind that there the Court was dealing with the Sherman Act, an "affecting" commerce statute of the broadest scope] really supports the position that Shell's sales are in *intrastate* commerce. That was a suit for treble damages under the Sherman Act by a grower of sugar beets who sold the raw beets on the farm to certain processors who processed the beets into sugar which was sold in interstate commerce. The beet farmer was paid for his beets a certain percentage of what the processor received when he sold the sugar, an arrangement quite similar to the casinghead gas contract under which Shell sells raw casinghead gas to Phillips at the field separator. The District Court, 64 F. Supp. 265, and the Circuit Court of Appeals, 159 F. 2d 71, denied recovery because the sale of the raw beets on the farm was not a sale in interstate commerce. The Supreme Court reversed, not on the ground that the sale of raw beets on the farm was a sale in interstate commerce (because the Court actually concluded that this was a sale in *intrastate* commerce), but because the control of the intrastate market of sugar beets would have some effect upon the interstate market of sugar and the Sherman Act, being an "affecting" commerce statute, was broad enough to cover that particular situation.

The Court specifically found that the trade in *sugar* (not in sugar beets) which took place after the *sugar beets* were processed was "the only interstate

commerce". In footnote 24 the Court points out that "on the facts pleaded the only trade in *beets* was *intrastate*". And the Court there clearly emphasized the distinction which we are making here, *i. e.*, under the Sherman Act and other "affecting" commerce statutes, the restraints and burdens are not immune because they take place prior to the point in time when interstate commerce begins because "the essence of the *affectation* doctrine was that the exact location of the line (between intrastate and interstate commerce) made no difference, if the forbidden effects flowed across it to the injury of interstate commerce". However, the essenc of the "in" commerce doctrine, as established in the *Bunte Brothers* case, is that the sale or activity must take place at a point in time when interstate commerce has actually started, and not at some prior time or place during the course of local, intrastate activity. (Emphasis added.)

B. The "Gap" Dealt with in the Act Has Never Included a Sale of Casinghead Gas Prior to Gathering and Processing.

With reference to the famous "gap" which the Act was designed to close, the Presiding Examiner says that interstate commerce is coextensive with the "gap" to which the Supreme Court referred in the *Phillips* case. However, the "gap" there refrred to by the Court was the lack of regulatory power over certain interstate sales resulting from the constitutional prohibition against the States regulating them and the absence of federal assertion of power until the enactment of the Natural Gas Act. Certainly the States have always been empowered to regulate in-

trastate sales and the "gap" has never been considered to encompass an area of intrastate activity as to which the States had the power to act but chose not to do so. The Presiding Examiner, however, in reasoning that " 'interstate commerce' as the term is used in the Act is, at least, coextensive with the "gap" to which the Court referred", concludes that when a State does not control the price at which casinghead gas which ultimately finds its way into another State is sold at the wellhead, such sale becomes a sale in interstate commerce for resale no matter what processing, manufacturing or other incidents take place before the raw product is broken down and the residue sold to an interstate transmission line.

This reasoning, we submit, completely disregards the clear words of the Act and would result in the substitution of Administrative for Congressional legislation. No stretch of what was held or said in the *Phillips* case supports that reasoning. The Supreme Court's holding in the *Bunte Brothers* case precludes its application here. Furthermore, to say that "interstate commerce" and the "gap" are coextensive is not helpful in resolving this case because our position is that interstate commerce has not begun at the time Shells sales are made.

Much has been said and written about the famous "gap" with which Congress was dealing when it passed the Natural Gas Act. In the *Phillips* case the Court said that the "gap" was in interstate sales. No one, until the Presiding Examiner in this case, has ever asserted that the "gap" extended to *intrastate* sales. Obviously, no such contention has ever been made because the gap resulted only from the

constitutional inability of the States to transgress the commerce clause and impose regulation upon interstate transactions. In fact, the recognition by the Presiding Examiner that the States are empowered to regulate the price of sales of raw gas before processing, would clearly exclude them from the "gap".

The last remnant of the "gap" was closed when in the *Phillips* case the Supreme Court reached back to the inception of the interstate movement. It thereby closed the last vestige of the "gap", as to which a few months earlier in the *Calvert* case it held that the States were powerless to tax, because upon leaving the processing plant the gas begins or "takes off' on its interstate journey.

In *Federal Power Commission v. East Ohio Gas Co.* (338 U. S. 464) the Court held that in enacting the Natural Gas Act "Congress intended not to cut down state regulatory power, but rather to supplement it by closing 'the gap created by the prior decisions'. (citations). We adhere to those statements. But *prior* constitutional decisions, not what we have since decided or would decide today, form the measure of the gap which Congress intended to close by this Act.' (Emphasis by the Court.)

With this standard to guide us, let us see what constitutional limitations circumscribed action by the States in the field of interstate commerce *prior* to passage of the Natural Gas Act in 1938. The Commission is familiar with the cases of *Missouri ex rel. Barrett v. Kansas Natural Gas Company*, 265 U. S. 298, decided in 1924, and *Public Utilities Commission v. Atteboro Steam & Electric Company*, 272 U. S.

82, decided in 1927. In the *Kansas Natural Gas* case the Court held that the States were powerless under the commerce clause to regulate the rate charged distributors by interstate pipe lines which had transported gas from another State in an uninterrupted flow to the place of sale. The *Attleboro* case applied this same principle to the interstate transportation and sale of electric energy. The *Kansas Natural Gas Company* case, it must be remembered, dealt with sale and delivery of gas which had traveled interstate and passed without change or interruption from the high-pressure lines of the interstate pipe line company into the slightly lower-pressure lines of the distributor, hence it was clearly a sale in interstate commerce, because the interstate journey was not broken at the time the sale took place.

As the Court observed in the *East Ohio Gas Company* case (338 U. S. at 470), the decisions prior to the Natural Gas Act had made it clear that the national commerce power alone covered the high-pressure trunk lines to and including the point where pressure was reduced and the gas entered local mains, while the States could regulate the gas *after* it entered the local mains. The converse of the principle, which was an established concept of constitutional law at the date of passage of the Natural Gas Act, that once gas leaves the high-pressure interstate line and entered the local main it was subject to state regulation, is that at the origin end of the journey, gas does not leave the area of state regulation until it passes out of the local production and gathering lines and into the current of the interstate pipeline. The passage of the gas from the gathering line into the high-pressure interstate line, like its passage out of

the high-pressure interstate line into the local main, where these events are accomplished without interruption in the flow other than change in pressure, is a transaction in interstate commerce. At the beginning of the journey the entry of the gas into the line of the interstate pipe line is the inception of the interstate journey just as the exit of the gas from the interstate line and into the local main is the conclusion of that journey. Activities taking place either before or after these points are intrastate and were in 1938, as they are today, subject to regulation by the States.

That, as of the date of the Natural Gas Act, the States were clearly authorized to act with respect to gas after it entered the local mains is so well stated in footnote 10 to the Court's opinion in the *East Ohio Gas Co* case (338 U. S. at 470) that we quote it in full:

"In both Public Utilities Com. v. Landon, 249 U. S. 236, 245, 63 L. ed. 577, 586, 39 S. Ct. 268, and Pennsylvania Gas Co. v. Public Service Com., 252 U. S. 23, 28 63 L. ed. 434, 441, 40 S. Ct. 279, this Court held that states could regulate retail sales of interstate gas to local consumers. In the Landon Case the Court reasoned that state control of a local distributing company was permissible because 'interstate movement ended when the gas passed into local mains.' The Pennsylvania Gas decision, however, was based on a completely different line of reasoning. The Court held that the gas continued in interstate commerce until it reached the burner tips, but nevertheless permitted state regulation because retail sales presented a problem of local rather than national concern. In Missouri ex rel. Barrett v. Kansas Natural

Gas Co., 265 U. S. 298, 310, 68 L. ed. 1027, 1031, 44 S. Ct. 544, the Court resolved these conflicting doctrines by readopting the Landon rule. It limited the Pennsylvania Gas holding to its precise facts by interpreting that decision as resting solely on the Landon principle that states could regulate charges for service to local consumers. Public Utilities Com. v. Attleboro Stea m& Electric Co., 273 U. S. 83, 89, 71 L. ed. 549, 553, 47 S. Ct. 294, reaffirmed this choice of doctrine, applying it to a company which like East Ohio, transmitted its product (electricity) wholly within one state. In East Ohio Gas Co. v. Tax Commission, 283 U. S. 465, 470-472, 73 L. ed. 1171, 1174, 1175, 51 S. Ct. 499, the Court recognized that the doctrine of Pennsylvania Gas extending interstate commerce to the burner tips was in conflict with and must yield to the doctrine of the Landon and Kansas Gas Cases. See note 13 *infra*. Thus when the Natural Gas Act was passed this Court's decisions had already resulted in a sharp cleavage between local distribution facilities and high-pressure pipe lines serving those facilities."

Thus it is seen that gas is no longer in the flow of interstate commerce, but is subject to state regulation, after it leaves the interstate line and enters the local mains so that, at the time of the passage of the Natural Gas Act, the only "gap" at the *destination* end of the interstate journey was the sale and delivery from the interstate line to the distributors. No one has ever seriously contended that the Natural Gas Act did not close this "gap".

If gas *leaves* interstate commerce upon entering the local mains in the state of destination, it is

corollary, as we have shown, that it does not *enter* interstate commerce until it leaves the local gathering line or processing plant in the State of origin. The same principle is applicable at each end of the interstate line. See Carter v. *Carter* Coal Co. (1936), 298 U. S. at p. 306, where the Court stated:

"The restricted field covered by the *Swift* and kindred cases is illustrated by the *A. L. A. Schechter Poultry Corp.* Case, *supra*. There the commodity in question, although shipped from another state, had come to rest in the state of its destination, and, as the Court pointed out, was no longer in a current or flow of interstate commerce. The *Swift* doctrine was rejected as inapposite. *In the Schechter Case the flow had ceased. Here it had not begun. The difference is not one of substance. The applicable principle is the same. . .*"

At the inception end of the interstate journey, it was generally felt after the passage of the Natural Gas Act that the only *possible* "gap" was the one where gas was sold and delivered directly into the interstate line (such as was involved in the *Phillips* and *Calvert* cases), as this was a transaction at the origin end comparable to delivery into local mains at the distribution end of the journey. But it was likewise felt by many that this "gap" at the origin end was closed by the production and gathering exemption of section 1(b) which left the States free to regulate sales taking place at that point. The *Phillips* case settled that question, but it did not open up the gap to extend all the way back to the wellhead and deprive the States of the power to regulate sales at that point. No one to our knowledge had ever contended

that a sale of raw casinghead gas at the well to a processor was not subject to State regulation at the time the Natural Gas Act was passed. The cases cited in our original brief establish that such sales are local, intrastate transactions within the regulatory power of the States. See *Coe v. Errol* (1886) 116 U. S. 517; *Carter v. Carter Coal Co.* (1936) 298 U. S. 238; *Oliver Iron Mining Co. v. Lord* (1923) 262 U. S. 172; *Crescent Cotton Oil Co. v. Mississippi* (1921) 257 U. S. 129; *Chasianiol v. Greenwood* (1934) 291 U. S. 584; *Federal Compress and Warehouse Co. v. McLean* (1934) 291 U. S. 17; *Utah Power & Light Co. v. Pfost* (1932) 286 U. S. 165. See also: *Arkadelphia Mill Co. v. St. Louis S. W. R. Co.* (1918) 249 U. S. 134 which dealt with orders of a State Commission fixing railroad rates under an Arkansas statute authorizing it to do so. One question was whether certain shipments of rough lumber from the forest to milling points in Arkansas, followed by forwarding of the finished products (staves and hoops) to points outside the State, was a continuous movement in interstate commerce. About 95% of the finished products was made for out-of-state shipment. And when the rough lumber was shipped from the forest to the mills it was known and intended that about 95% of the finished products would be sold and shipped out of the state. The Court, relying on *Coe v. Errol, supra,* and similar cases, held that the shipment from the forest to the mill was *intrastate,* observing: "The question is too well settled by previous decisions to require discussion", and said (p. 151):

"Upon the facts as stated, it is our opinion that the district Court erred in treating the movement of the rough lumber from the woods to the milling point as

interstate commerce. It is not merely that there was no continuous movement from the forest to the points without the state, but that when the rough material left the woods it was not intended that it should be transported out of the state, or elsewhere beyond the mill until it had been subjected to a manufacturing process that materially changed its character utility and value."

We submit there is absolutely no distinction in legal principle between the movement of rough lumber from the forest to the mill followed by out-of-state sale and shipment of the barrel staves and hoops and the movement of raw casinghead gas from the well to the processing plant followed by out-of-state sale and shipment of residue gas.

The doctrine of *Coe v. Errol* so succinctly restated in the *Arkadelphia* case was the law in 1938 when the Natural Gas Act was passed as it is the law today. See *Carter v. Carter Coal Co., supra*, decided in 1936 which reaffirms and applies the *Arkadelphia* case. Hence it is clear that when the Natural Gas Act was passed in 1938 there was no "gap" between the well and the processing plant because the States were then as they are now clearly empowered to regulate in this zone. The *Phillips* decision by the construction which the Court gives to the production and gathering exemption of the Act now establishes that there was a "gap" at the field end in 1938 which the Act closed. But that "gap" was limited insofar as sales of casinghead and wet gas were concerned to sales and transportation taking place after the gas had undergone gathering and processing and then entered upon its interstate journey. In fact the *Cal-*

vert case establishes that the States have no power to tax gas at that point because it is then "taking off" into interstate commerce. Obviously gas like any other commodity can have only one "taking off" into interstate commerce.

The foregoing discussion and authorities together with those cited in our original brief demonstrate that the States have always been empowered to regulate local intrastate activities such as Shell's sales at the wells and separators of the raw gas before it is gathered and processed. This power is constitutionally vested in the States because these activities take place before interstate commerce begins. The area involved between the production of a commodity and its processing or manufacture in the same State prior to shipment out-of-state has never been within any "gap" free from regulation. It has always been subject to State regulation because it encompasses an area of intrastate activity, hence such activities are not covered by the Natural Gas Act. The only way the Act can be made to apply to Shell's sales is to stretch its scope to cover intrastate sales, and Congress alone has this power when acting within constitutional limits.

C. Intervening Local Activities between Shell's Sale and Commencement of the Interstate Journey.

The principle applicable to this proceeding cannot be obscured nor explained away by the Presiding Examiner's observation that the "natural gas flows continuously and without interruption" from the well to the burner tip, hence a sale at the well, no matter to whom made nor what happens between the well

and the time the residue gas is sold to an interstate line, is in interstate commerce. If that reasoning is correct, there is no logical reason to stop at the top of the well. It would apply equally to the well-bore located thousands of feet below the surface. The Presiding Examiner's conclusion in this regard is not alone without evidentiary support, but it conflicts with positive evidence that the casinghead gas which Shell sells at the separator "for the purpose of manufacturing gasoline or such other product or products as may be manufactured at Buyer's Plant" (See Exhibit 2), is first gathered and then actually undergoes an extensive manufacturing process before the resulting residue gas is sold. The casinghead gas is subjected to a process that actually changes its "character, utility and value", just as the raw timber in the *Arkadelphia Milling Co.* case, *supra;* the mechanical energy in *Utah Power & Light Co. v. Pfost,* 286 U. S. 165; the cotton boll in *Crescent Cotton Oil Co. v. Mississippi,* 257 U. S. 129 and *Chassaniol v. Greenwood,* 291 U. S. 584; and the partially dried grape in *Parker v. Brown,* 317 U. S. 341.

The nature of the product (casinghead gas) and the manufacturing process to which it is subjected (absorption) are such that there is always some movement from the time the raw product leaves the separator until the residue gas leaves the processing plant. But a mere reference to the intricate steps through which the raw product passes from the time it enters the plant until the time the residue leaves the plant (62-69, 142-145, and Exhibit 5), will demonstrate that this processing is not merely an incident to the movement of the gas but is a real manufacturing process which actually and materially changes

the character, utility and value of the casinghead gas. But the result is not altered by the fact that throughout the various steps there may be some movement and that the changes in the product are somewhat imperceptible. An exact parallel was dealt with in the *Pfost* case, *supra,* where the question involved was the power of a state to tax a generating plant in which generators converted mechanical energy of falling water into electric energy for simultaneous transmission into another state at stepped-up current. The Court held that the generation (like processing in this case) was a local, intrastate activity and that the electric energy (like the residue gas) did not enter interstate commerce until it left the generating plant, reasoning that (286 U. S. at p. 179-180):

"While conversion and transmission are substantially instantaneous, they are, we are convinced, essentially separable and distinct operations. The fact that to ordinary observation there is no appreciable lapse of time between the generation of the product and its transmission does not forbid the conclusion that they are, nevertheless, successive and not simultaneous acts.

"The point is stressed that in appellant's system electricity is not stored in advance but produced as called for. The consumer in Utah, it is said by merely turning a switch, draws directly from the water fall in Idaho, through the generating devices, electrical energy which appears instantaneously at the place of consumption. But this is not precisely what happens. The effect of turning the switch in Utah is not to draw electrical energy directly from the water fall, where it does not exist except as a potentiality, but

to set in operation the generating appliances in Idaho, which thereupon receive power from the falling water and transform it into electrical energy. . . . The manufacture to order of goods and their immediate shipment to the purchaser furnish a helpful analogy, notwithstanding the fact that there the successive steps from order to delivery are open to physical observation, while here the succession of events is chiefly a matter of inference—although inference which seems unavoidable. The process by which the mechanical energy of falling water is converted into electrical energy, despite its hidden character, is no less real than the conversion of wheat into flour at the mill.

* * * * * * * *

"We think, therefore, it is wholly inaccurate to say that appellant's entire system is purely a transferring device. On the contrary, the generator and the transmission lines perform different functions, with a result comparable, so far as the question here under consideration is concerned, to the manufacture of physical articles of trade and their subsequent shipment and transportation in commerce."

The effect of turning the valve on the line connecting Phillips' processing plant with El Paso's pipe line (like turning the switch in Utah in the *Pfost* case) does not draw residue gas directly from Shell's wells. It merely permits an outlet for the processing plant which receives the casinghead gas from the wells and transforms it into liquid products and residue gas.

The evidence in this case and the many decisions to which we have referred cannot under any reasonable appraisal lead to the conclusion that there is a constant uninterrupted flow in interstate commerce of the casinghead gas which Shell sells to Phillips. In fact, the casinghead gas never reaches the interstate pipeline, only the residue gas extracted therefrom enters upon the interstate journey. The Presiding Examiner does not mention the controlling analogy which the Supreme Court makes in the *Calvert* case (referred to at page 27 of our original brief) between a gas processing plant such as Phillips' and an electrical generating plant such as the one involved in the *Pfost* case. The Court there said in footnote 6:

"The Court (in the Pfost case) found that in the operation there involved it was necessary to convert the mechanical energy into electrical energy before it could be transmitted and that this transformation was completed at the generator where the interstate movement began. This is analogous to the situation here (the Calvert case) where the gas is prepared by Phillips for transmission and is then fed into appellants' (Michigan-Wisconsin et al.) lines."

The Presiding Examiner concludes, however, that the processing by Phillips is not preparation for interstate transmission (as the Court said it was in the *Calvert* case). In so doing, the Presiding Examiner must be attempting to bring Shell's sale of casinghead gas within the doctrine of *Interstate Natural Gas Co. v. F. P. C.*, 331 U. S. 682, in which the Court held that a sale of natural gas by one natural gas company to another, after completion of production

and gathering, with delivery at increased pressure directly into an interstate pipeline for immediate and uninterrupted flow into other States, was a sale in interstate commerce. In connection with its finding that the movement of the gas there involved was in interstate commerce at the time and place of sale and delivery, the Court was careful to point out that the gas was moved to the point of delivery to the purchasers "*without interruption for storage, processing or for any other purpose.*" And the Court also found (footnote 7):

"Gas in the Monroe field is 'dry' gas and consequently is not subjected to any extraction processing."

The Court concluded that "By the time the sales (by Interstate) are consummated nothing further in the gathering process remains to be done. We have held that *these sales* are in interstate commerce." The "these sales" referred to are sales made after the completion of gathering, thus indicating that the sales made prior to the completion of gathering are not interstate commerce. The Court also found that "Long before the gas reaches the compressor pumps it has been committed to its interstate journey which follows without interruption or deviation. *Under such circumstances*, the increase of pressure in the compressor stations must be regarded as merely an incident in the interstate commerce rather than as its origin." (Emphasis added.)

When the *Interstate* case is considered in the light of the Court's decision seven years later in *Michigan-Wisconsin Pipe Line Co. v. Calvert, supra*, the true

distinction becomes apparent. In the *Calvert* case the Court had before it the essential factor which was missing in the *Interstate* case, (but is present in the instant case) namely, processing, which followed gathering. And in the *Calvert* case the Court held that interstate commerce did not begin and the gas did not have its "taking off" into interstate commerce "until gathering and processing have ceased." *In other words, when the two decisions are considered in the light of their respective facts, they establish the principle that when gas is gathered and undergoes processing before the residue enters the pipe line which is to take it out of the state, this last event marks the origin of interstate commerce. Sales consummated by delivery prior to that point, such as Shell's sale to Phillips, are sales in intrastate commerce and are not within the scope of the Act.* (Emphasis added.)

Point II.

Shell's sale to Phillips is for manufacture—it is not for resale.

The Presiding Examiner concludes (p. 46) that Shell's sale of casinghead gas is a sale "in interstate commerce for resale, or such other purpose as the purchaser may choose. Actually the purchaser chooses . . . to remove from the gas certain components from which the purchaser manufactures natural gasoline and other products. However, *nothing is manufactured from the residue gas* and it is resold in interstate commerce." (Emphasis added.) The Examiner also concludes (p. 41) that the contractual provision specifying the purpose for which the casing-

head gas was sold was not intended as a restriction to manufacture (although that is exactly what it says) and furthermore there appears some doubt that Shell has no control over this gas after it is sold to Phillips.[3]

The casinghead gas contract under which Shell sells the casinghead gas to Phillips is a contract of sale. Title to the casinghead gas, including all components and by-products thereof, passes to Phillips at the outlet of the separator. In *Saulsbury Oil Co. v. Phillips Petroleum Co.* (1944) 142 F. 2d 27 (cert. den. 323 U. S. 727), the Circuit Court of Appeals for the Tenth Circuit had for consideration a casinghead gas contract containing the exact material provisions as those contained in the contract between Shell and Phillips, and the Court held (p. 33):

"The casinghead gas contracts, in terms, are contracts of sale . . . Every element essential of a sale is present and there is nothing to indicate that the parties intended otherwise."

The purpose for which the casinghead gas is sold is unmistakably stated to be (Exhibit 2) "for the purpose of manufacturing gasoline or such other product

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[3] This last statement by the Examiner appears to be contradicted by his own subsequent finding (p. 48) that "The evidence shows conclusively that the sales and deliveries of natural gas by each of the petitioners is made on or close to the lease . . . and that *thereafter, the producer of the gas has no further ownership or control over it.*" (Emphasis added.)

or products as may be manufactured at Buyer's plant." At the date of the sale, Phillips was not selling residue because there was no market for it. However, the contract does provide that Phillips "shall have the right without the obligation" to sell such surplus residue gas as Shell does not elect to take for development and operation of its leases. Phillips is under no obligation whatsoever to sell any part of the residue. It merely has "the right without the obligation" to do so. But if Phillips does sell the residue, Shell has no voice or control in the sale as it has no title to residue or liquids extracted from the casinghead gas.

The record shows that Phillips did not start selling any of the residue until 1950 (about 12 years after Shell became a party to the sale) and that since Phillips began selling residue, Shell actually receives more for the liquid products extracted from the casinghead gas which it sells to Phillips than it receives as additional consideration attributable to residue (43 and Exhibit 4). The reason for requiring that the casinghead gas be manufactured is that this is the only way in which the Seller can be assured that the valuable liquid hydrocarbons will be extracted from the gas, and it is the market value of these liquids which determines in a large measure the price which Shell receives for its casinghead gas.

In concluding that Phillips is under no obligation to manufacture gasoline and other liquids from the casinghead gas but can do as it "*chooses*" with that product, the Presiding Examiner disregards or fails to apply fundamental rules of contract law to the contract which Shell has made with Phillips. Phillips

cannot do as it chooses with the casinghead gas. The material and essential consideration for which the casinghead gas is sold is that it *will* be manufactured into liquid products. If Phillips undertakes to put this casinghead gas to *any* other purpose it would thereby breach its contract with Shell and be subject to suit for specific performance or damages. Furthermore, Phillips cannot use this casinghead gas for any purpose other than manufacture because to do so would deprive Shell of the right to take the by-product, residue gas, for lease development and operation.

The Presiding Examiner also considers it to be important that *residue gas* does not undergo manufacture for he says (p. 46): "However, nothing is manufactured from the residue gas and it is resold in interstate commerce." We, of course, do not contend that Shell sells *residue gas* to Phillips for manufacture, nor do we contend that the sale of residue from Phillips to El Paso is for manufacture. Our position is that in accordance with the clear words of the contract, and the actual practice for many years, Shell sells casinghead gas to Phillips, not to be resold by Phillips, but for the purpose of manufacturing gasoline or other products. Unless the Commission is prepared to disregard the clear language of a solemn contract, the sale from Shell to Phillips must be considered a sale for manufacture and not for resale. In fact, the product which Shell sells to Phillips is never resold by Phillips. The only thing which Phillips later sells is a by-product of the casinghead gas which it buys from Shell.

Point III.

The Product which Shell sells to Phillips at the separator is not the same product which Phillips sells to El Paso—nor is it "natural gas" as that term is defined in the Act.

Without attempting to distinguish the *Pfost* case, *supra*, discussed under Point III of our original brief and Point I(c) hereof, and which we submit controls the disposition of the instant case, the Presiding Examiner concludes that "the gas sold by the several petitioners herein is 'natural gas' within the meaning of the Act." In discussing the uncontradicted evidence that the product which Shell sells to Phillips is not fit for consumption as fuel and for transportation in high-pressure pipe lines, the Examiner says (p. 34):

"There is no evidence in the record that interstate pipe lines were then (referring to 1938) operated at high pressure or that gas then transmitted in interstate lines consisted almost entirely of ethane and methane."

When a witness testifies, as Mr. Wade did (137, 138, 161, 162) that *fuel gas* consists almost entirely of methane and ethane, such testimony cannot be restricted in time to the particular day on which he happens to be on the witness stand. It applies at all times to the product which he is discussing, *i.e.*, natural gas to be used as fuel. The important point is that what Congress was dealing with when it regulated "natural gas unmixed" was gas suitable for fuel for public consumption, whether at the date of the Act or thereafter, and the evidence shows that

the casinghead gas which Shell sells to Phillips does not meet this standard.

With reference to the Examiner's statement that the evidence does not show that at the date of the Natural Gas Act interstate pipe lines were operated at high-pressure, we invite the Commission's attention to *Federal Power Commission v. East Ohio Gas Company* (1950) 338 U. S. 464, where the Court, in discussing the local distribution exemption of section 1(b) of the Act held (pp. 469-470):

"But what Congress must have meant by 'facilities' for 'local distribution' was equipment for distributing gas among consumers within a particular local community, not the high-pressure pipe lines transporting the gas to the local mains. For in decisions prior to enactment of the statute this Court had sharply distinguished between the two: it made it clear that the national commerce power alone covered the high-pressure trunk lines to the point where pressure was reduced and the gas entered the local mains, while the state alone could regulate the gas after it entered those mains. The legislative history shows that the attention of Congress was directly focused on the cases drawing this distinction."

In footnote 10 the Court discusses its prior decisions which drew the distinction between the high-pressure and low-pressure transmission lines and concludes this footnote (338 U. S. 470) with this summary, which completely refutes the Examiner's premise that at the time of the passage of the Act it is not shown that gas was transported in high-pressure lines:

"Thus when the Natural Gas Act was passed this Court's decisions had already resulted in a sharp cleavage between local distribution facilities and high-pressure pipe lines serving those facilities."

After discussing a number of previous decisions the Court said:

"Under these decisions state regulatory power could not reach high-pressure trunk lines and sales for resale. This was the 'gap' which Congress intended to close."

Thus, while there may be no evidence in the record that interstate pipe lines were operated at high-pressure in 1938. It is apparent from the history of the Act as reviewed in the *East Ohio Gas Company* case that "high-pressure trunk lines" were the *very* type of lines whose activities created the "gap" which the Act was passed to close.

In addition to the cases cited and discussed in our original brief, the case of *Saulsbury Oil Company v. Phillips Petroleum Company, supra,* definitely establishes that when casinghead gas is sold to the operator of a processing plant and this processing results in the extraction of residue gas, the residue gas is not a part of the casinghead gas but is a by-product resulting from the manufacturing process. The *Saulsbury* case dealt with a casinghead gas contract the material provisions of which were identical with those of the contract under which Shell sells its casinghead gas to Phillips. In fact, Phillips and the same form of casinghead gas contract involved in this case was involved in that case. It was there

contended that the casinghead gas contract did not effect a change of title because the residue gas which the purchaser (Phillips) was obligated to return to the seller for lease development and operation purposes, was the same product as the casinghead gas which Phillips purchased from Saulsbury. In concluding that the casinghead gas contract constituted a sale and that residue gas was a different product than casinghead gas, the Court held (p. 33):

"It is true that Phillips was obligated to return to Saulsbury (the seller) a portion of the residue gas remaining after the processing of the casinghead gas. *The residue gas to be returned was not a portion of the casinghead gas sold.. It was a residue remaining after a processing operation which removed the natural gasoline and was a by-product of the casinghead gas.*. The casinghead gas contracts did not reserve a part of the casinghead gas in its original form as a royalty to Saulsbury. If the identical thing delivered is to be returned there is ordinarily no transfer of title, but if the person to whom delivery is made is to return another thing of the same kind or a different kind, the transaction will ordinarily constitute a sale and effect a change of title. (Emphasis added.)

"We conclude that the title to the casinghead gas passed to Phillips on the delivery thereof into its gathering lines."

The *Saulsbury* case, the decisions discussed in our original brief, and the evidence adduced at the hearing in this case establish conclusively that the raw product which Shell sells to Phillips at the separator

is not the same product which Phillips sells to El Paso.

Conclusion.

The reasoning upon which the Presiding Examiner bases his conclusion that Shell's sales are covered by the Act can find support only in the negation of a legal doctrine established in 1886 in *Coe v. Errol* and consistently applied through the years with reaffirmation as late as 1954 in *Michigan-Wisconsin* v. *Calvert*.. His conclusion negates the very basis upon which rest harmonious and constitutional relations between the legislative and administrative or quasi-judicial branches of the government in that it broadens by administrative caprice a limitation which Congress chose to impose upon the exercise of its power under the commerce clause in the regulation of sales of natural gas. It creates a conflict between Federal and State jurisdiction in an area where the States are constitutionally empowered to act and have competently done so, thus needlessly provoking the confusion and uncertainty of overlapping regulation. In effect, the Presiding Examiner construes certain language in the *Phillips* case as creating a non-existent "gap" between Federal and State regulatory power and then fills that "gap" with federal power which Congress did not exercise when it enacted the Natural Gas Act. The *Phillips* decision is not a cure-all for advocates of complete federal regulation of natural gas from the reservoir to the burner-tip. It may have rendered impotent the production and gathering exemption but it did not erase the limitation that the Act applies only to "the sale in interstate commerce of natural gas for resale" and "shall

not apply to any other sale of natural gas." Nor did that decision transpose the carefully chosen scope of the Act to make its provisions applicable to "the sale for resale in interstate commerce." As the Court itself said in *Armour & Co. v. Wantock* (1944) 323 U. S. 126 at 132-133:

"It is timely again to remind counsel that words of our opinions are to be read in the light of the facts of the case under discussion. . .General expressions transposed to other facts are often misleading."

We respectfully submit that the decision of the Presiding Examiner is erroneous and should be reversed and the Commission should issue an order declaring that it has no jurisdiction over Shell's sales involved in this proceeding, and that as to said sales Shell is not a natural-gas company under the Natural Gas Act.

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Certificate.

I hereby certify that I have this day served the foregoing exceptions and brief upon parties of record in this proceeding by mailing a copy thereof properly addressed to:

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Richard L. Fruchterman
Dale E. Doty
Norman Duke
Carl Illig
Bernard Foster, Jr.
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John T. Miller, Jr.
William J. Grove
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Dated at New York this 24th day of May, 1955.

.....

(Oliver L. Stone),
Attorney for Shell Oil Company.

OPINION AND ORDER AFFIRMING EXAMINER'S DECISION.

United States of America,
Federal Power Commission.

Opinion No. 284.

In the Matters of:
Deep South Oil Company of Texas, Humble Oil & Refining Company, Shell Oil Company.

Docket No. G-2952.
Docket No. G-5261.
Docket No. G-4671.

Adopted: September 2, 1955.

Issued: September 9, 1955.

Before Commissioners: Jerome K. Kuykendall, Chairman; Claude L. Draper, Seaborn L. Digby, Frederick Stueck and William R. Connole.

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Upon consideration of the entire record in these proceedings, including the testimony and evidence adduced at the hearings which were concluded on January 10, 1955, briefs filed by all the parties and Staff Counsel, the decision of the Presiding Examiner, issued April 5, 1955, exceptions thereto and the oral argument thereon, held on June 13, 1955, we affirm the aforesaid decision of the Presiding Examiner.

In view of the fact that in these matters there is presented for the first time the question whether a sale of natural gas made before the completion of "production and gathering" (even though it was conceded that such was otherwise a sale in interstate commerce) is exempt from the Natural Gas Act (Act) by reason of the exclusionary provisions of Section 1(b) of the Act, we deem it desirable to set forth the reasons for our affirmance.

The Petitioners, Deep South Oil Company of Texas (Deep South), Humble Oil & Refining Company (Humble) and Shell Oil Company (Shell), while maintaining that their sales of natural gas are not in fact sales in interstate commerce, nevertheless claim, if their sales are found to be in interstate commerce, that the sales in question are exempt under Section 1(b).

Petitioners, Shell and Humble, further contend that their sales are sales of "casinghead gas" which is not the same product as the surplus residue gas, which, they claim, is the "natural gas unmixed" to which Congress referred in the definition of natural gas in Section 2(5) of the Act.

Section 1(b) of the Act provides, in pertinent part, as follows:

The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial or any other use, and to natural-gas companies engaged in such transportation and sale, but shall not apply to any other transportation or sale of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

As defined in Section 2 of the Act:

"Natural gas" means either natural gas unmixed, or any mixture of natural gas and artificial gas;

"Natural-gas company" means any person engaged in the transportation of natural gas in interstate commerce or the sale in interstate commerce of such gas for resale.

There is no merit to the claim that casinghead gas is not natural gas. The Examiner effectively answered all such claims, but it may be added that other Court cases confirm his conclusions.

In Mississippi River Fuel Corporation v. Federal Power Commission, 121 F. 2d 159, Mississippi River Fuel Corporation (Mississippi) claimed that the gas which it delivered for its purchasers is not resold for public consumption because its purchasers, Illinois Iowa Power and

Laclede Gas Companies, use it as an ingredient of a mixture which, in turn, is resold to the ultimate consumer. Mississippi urged that the resulting product burned by the consumer had only a slight similarity to natural gas.

In disposing of this contention, the Court at page 164 of its decision stated:

Natural gas is not only the gas as transported and sold, but by statutory definition natural gas is any mixture of natural and artificial gas, and hence, the send-out product as sold by the Illinois Iowa Power Company and the Laclede Gas Company is natural gas within the meaning of this act. While the natural gas resold may not be the same in identical substance as that transported, yet Congress clearly intended to regulate transactions such as here considered. It has used language appropriate to carry out that purpose. To construe the statute as contended by petitioner would limit it to so restricted a field of operation as to thwart the purpose of Congress and render the act impotent.

See also Natural Gas Pipeline Co. of America v. Panoma Corporation, 271 P. 2d 354.

Furthermore, Petitioners' sales are sales in interstate commerce for resale for ultimate public consumption and, as held by the Presiding Examiner, such sales are not within the exclusionary provisions of Section 1(b) of the Act.

The pertinent facts of record are set forth in the Examiner's decision, and although not repeated here, they

show that there is an uninterrupted flow of natural gas from the wells of Deep South, Shell and Humble across State lines.

The Presiding Examiner in his initial decision refers to the testimony by Humble's principal witness, Ralph J. Schilthius, as being "sketchy and inconclusive" with respect to the movement of such gas in interstate commerce (p. 56 mimeographed copy of decision). We have carefully reviewed that testimony and to us it seems most conclusive. We so find. This Humble witness testified in answer to questions by Humble's counsel, that he checked with the plant operators through whose plants Humble's gas was processed and found:

(1) That the natural gas in question and sold by Humble was commingled in the processing plants with natural gas from other sources.

(2) That the commingled gas in whole or in part was sold by the plant operators to interstate pipe lines which transported that gas across State lines for ultimate public consumption.

A definite check by Humble's principal witness with plant operators as to the ultimate disposition of the commingled stream of natural gas of which Humble's gas was a part and which so satisfied Humble's witness that he was willing to testify under oath and adversely to Humble's contention and interest, as manifest in this case, cannot be taken as other than conclusive. It may well be that the testimony is not extensive nor overly detailed, but it represents the considered judgment and opinion

of the witness presented by Humble respecting the ultimate disposition of the natural gas and the gas sales contracts, with which we are here concerned. We think that extended and prolix testimony could not have more decisively stated the facts than were stated in short form by this witness in the manner in which he testified.

Hence, we find that the natural gas which is sold by the Petitioners is sold in interstate commerce. The conclusion expressed in Interstate Natural Gas Co., Inc. v. Federal Power Commission, 331 U. S. 682, 688 is particularly pertinent here: "Clearly the sales in question [are] a part of commerce being carried on between points in [New Mexico and Texas] and points in other States."

We are cognizant that the following underlined language, appearing at page 685 of the Interstate decision raises the question whether storage or processing interrupts the continuous flow of the natural gas from the wells across the State line:

The entire movement of the gas from the wells to the purchasing companies through the compressor pumps and across the state line is a continuous process without interruption for storage, processing or for other purposes.

As far as these Petitioners are concerned, there is no storage but there is processing. In every processing operation through a gasoline plant, dehydration plant or desulphurizing plant the movement of gas is uninterrupted and continuous. The gas moves into the plant in

a continuous stream and flows out of the plant in an equally continuous volume. The only reduction in volume results from the removal of various elements in the process.

Moreover, the Supreme Court in Eureka Pipe Line Co. v. Hallanan, 257 U. S. 265, and Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U. S. 157, have dispelled any doubt as to that question by holding that storage and processing do not interrupt the continuous movement in interstate commerce.

In the Michigan-Wisconsin case the facts were stated by the Court at page 163 of its decision as follows:

After the gas has been taken into the Michigan-Wisconsin pipes, it flows a distance of approximately 1,215 feet to a compressor station owned and operated by Michigan-Wisconsin, at which station the pressure of the gas is raised from about 200 lbs. to some 975 lbs. to facilitate movement to distant markets. In the course of its flow through this station the gas is compressed, cooled, scrubbed and dehydrated and then passes into a 24-inch pipeline which carries it 1.74 miles to the Oklahoma border and thence to markets outside Texas. Additional motive power is furnished by 15 other compressor stations in other states through which the gas is transported.

The entire movement of the gas, from producing wells through the Phillips gasoline plant and into the Michigan-Wisconsin pipeline to consumers outside Texas, is a steady and continuous flow.

With respect to the flow of such gas, notwithstanding the scrubbing and dehydrating, the Court at page 167 of its decision stated as follows:

> There is no break, no period of deliberation, but a steady flow ending as contemplated from the beginning beyond the state line. United Fuel Gas Co. v. Hallanan, 257 U. S. 277, 281. . .

The above statement of the Court is an apt description of the flow of the natural gas in the instant proceedings.

Even if only a portion of the gas from the Petitioners' wells crosses the State line as an integral part of a commingled mass, it is immaterial for it has been said that the smallness of the operation in interstate commerce does not take it out of the sphere of Federal jurisdiction. Valvoline Oil Co. v. United States, 308 U. S. 141; Jersey Central Power and Light Co. v. Federal Power Commission, 319 U. S. 61.

Furthermore, the fact that the Petitioners had no control over the gas after it was sold to the gatherers or processors and that they may have been indifferent as to whether any of the gas moved in interstate commerce is not controlling on the question of whether their sales are in interstate commerce. Where the question of intent is brought into issue, such intent relates to past transaction. However, where upon investigation it is found that the sales and movement in question are generally in interstate commerce, and the inquiry relates to future operations, the facts and not intent are conclusive. Nor is it necessary for any of the Petitioners to intend to sell their gas in interstate commerce. Even

reasonable anticipation that the gas flows in interstate commerce is sufficient. Bracht v. San Antonio & A. P. R. Co., 254 U. S. 489. In view of the factual situation, as found by the Presiding Examiner, and confirmed by us, each of the Petitioners has knowledge that the gas it was, and is, selling in the field enters into interstate commerce. That is true not only with respect to the direct sales to the pipe lines but also with respect to the sales to the gatherers and their plant operators. The Petitioners know to whom they are selling and that the sales by their purchasers are sales of gas which move in interstate commerce.

When the gas was sold by Petitioners, it commenced its journey in interstate commerce. Nothing further remained to be done by the petitioners after those sales. Thus Coe v. Erol, 116 U. S. 571; Oliver Iron Mining Co. v. Lord, 262 U. S. 172; and Chassanoil v. Greenwood, 291 U. S. 584 are not applicable to the facts before us.

We also confirm the Presiding Examiner's determination that the sales in question are sales in interstate commerce for resale and not for manufacture. Accordingly, the sales by each of the Petitioners is a sale in interstate commerce for resale.

The fact that the gas was sold by the Petitioners to an intermediary such as a gatherer or gasoline plant which, in turn, resold the gas in interstate commerce, does not affect our finding and conclusion. It is apparent from Phillips Petroleum Co. v. Wisconsin, 347 U. S. 672, 681-685, Congress intended that sales of the type in question should be subject to Federal regulation and not limited to

sales by pipelines to distributors. At page 682 of its decision, the Court stated:

> In general, petitioners contend that Congress intended to regulate only the interstate pipeline companies since certain alleged excesses of those companies were the evil which brought about the legislation. If such were the case, we have difficulty in perceiving why the Commission's jurisdiction over the transportation or sale for resale in interstate commerce of natural gas is granted in the disjunctive. It would have sufficed to give the Commission jurisdiction over only those natural-gas companies that engage in "transportation" or "transportation and sale for resale" in interstate commerce, if only interstate pipeline companies were intended to be covered.[10] See Federal Power Commission v. East Ohio Gas Co., 338 U. S. 464 . . . Rather, we believe that the legislative history indicates a congressional intent to give the Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transportation by an interstate pipeline company.[10] There can be no dispute that the overriding

[10] Just such wording was suggested to and rejected by the House Committee considering enactment of the Natural Gas Act, by the Chairman of the State of New York Department of Public Service, Public Service Commission. Hearings before House Committee on Interstate and Foreign Commerce on H.R. 4008, 75th Cong., 1st Sess. 146-147. An earlier bill, H.R. 11662, 74th Cong., 2d Sess., would have limited the jurisdiction of the Power Commission to "the transportation of natural gas in high pressure mains

congressional purpose was to plug the "gap" in regulation of natural-gas companies resulting from judicial decisions prohibiting, on federal constitutional grounds, state regulation of many of the interstate commerce aspects of the natural-gas business. A significant part of this gap was created by cases holding that "the regulation of wholesale sales of gas and electric energy moving in interstate commerce is beyond the constitutional power of the States." Interstate Natural Gas Co. v. Federal Power Com. supra, (331 U. S. at 689). The committee reports on the bill that became the Natural Gas Act specifically referred to two of these cases and to the necessity of federal regulation to occupy the hiatus created by them, thus, we are satisfied that Congress sought to regulate wholesales of natural gas occurring at both ends of the interstate transmission systems.

Petitioners cite our recent decisions in Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U. S. 179; . . . 71 S. Ct. 215, and Phillips Petroleum Co. v. Oklahoma, 340 U. S. 190; . . . 71 S. Ct. 221, as authority for the proposition that the states may regulate the sales in question here and, hence, that such sales are not within the gap which the Natural Gas Act was intended to fill. Those cases upheld as constitutional state minimum price orders, justified as conservative measures, applying to sales of

in interstate commerce and to natural-gas companies engaged in such transportation. . . ." Much of the legislative history advanced in support of petitioners' position was developed in conjunction with this bill, including the testimony of Dozier A. De Vane, Solicitor of the Federal Power Commission. Because of the much different jurisdictional provision of H.R. 11662, such testimony has little relevance here.

natural gas in interstate commerce. But it is well settled that the gap referred to is that thought to exist at the time the Natural Gas Act was passed, and the jurisdiction of the Commission is not affected by subsequent decisions of this Court which have somewhat loosened the constitutional restrictions on state activities, affecting interstate commerce, in the absence of conflicting federal regulation. Illinois Natural Gas Co. v. Central Illinois Public Service Co., 314 U. S. 498, 508; . . . 62 S. Ct. 384; Federal Power Com. v. East Ohio Gas Co. supra (338 U. S. at 472). The Federal Power Commission did not participate in the Cities Service and Phillips Petroleum Cases, the appellants there did not assert a possible conflict with federal authority under the Natural Gas Act, and consequently we expressly refused to consider at that time "[w]hether the Gas Act authorizes the Power Commission to set field prices on sales by independent producers, or leaves that function to the states. . ." 340 U. S. at 188, 189.

Regulation of the sales in interstate commerce for resale made by a so-called independent natural-gas producer is not essentially different from regulation of such sales when made by an affiliate of an interstate pipeline company. In both cases, the rates charged may have a direct and substantial effect on the price paid by the ultimate consumers. Protection of consumers against exploitation at the hands of natural-gas companies was the primary aim of the Natural Gas Act. Federal Power Com. v. Hope Natural Gas Co. supra (320 U.S. at 610). Attempts to weaken this protection by amendatory legislation exempting independent natural-gas producers from federal regulation have repeatedly failed, and we refuse to achieve the same result by a strained interpretation of the existing statutory language.

We wish to make it clear that our affirmance of the Presiding Examiner's Decision is not predicated upon the existence or absence of state regulation with respect to wellhead prices. The degree of state regulation and state opposition to Federal control is not determinative of our jurisdiction over the sales in question. Interstate Natural Gas Co., Inc. v. Federal Power Commission, supra, and Phillips Petroleum Co. v. Wisconsin, supra.

At pages 690-1 of its decision in the Interstate case, the Court stated:

Clearly, among the powers thus reserved to the States is the power to regulate the physical production and gathering of natural gas in the interests of conservation or of any other consideration of legiti-

mate local concern. It was the intention of Congress to give the States full freedom in these matters. Thus, where sales, though technically consummated in interstate commerce, are made during the course of production and gathering and are so closely connected with the local incidents of the process as to render rate regulation by the Federal Power Commission inconsistent or a substantial interference with the exercise by the State of its regulatory functions, the jurisdiction of the Federal Power Commission does not attach. But such conflict must be clearly shown. Exceptions to the primary grant of jurisdiction in the section are to be strictly construed. It is not sufficient to defeat the Commission's jurisdiction over sales for resale in interstate commerce to assert that in the exercise of the power of rate regulation in such cases local interests may in some degree be affected.

At page 681 of its decision in the Phillips case, the Court stated:

The Interstate case is also said to be distinguishable in that it did not involve an asserted conflict with State regulation, and federal control was not opposed by the State authorities, while in the instant cases there are said to be conflicting State regulations, and federal jurisdiction is vigorously opposed by the producing States. The short answer to this contention is that the jurisdiction of the Federal Power Commission was not intended to vary from State to State, depending upon the degree of State regulation and State opposition to federal control. We expressly rejected any implication to the contrary, in the Interstate case, 331, U.S., at 691-692. See Federal Power Commission v. Hope Natural Gas Co. * * *

Thus, it is obvious from the foregoing that our jurisdiction is not predicated upon the existence or lack of State regulation.

Our conclusions herein are fully supported by the decisions of the Supreme Court, particularly the Phillips case, 347 U.S. 672. In that case the Court made it plain that a sale in interstate commerce for resale within the meaning of the Natural Gas Act related to wholesale sales or sales in bulk, such as sales to interstate pipe line companies. There, in dealing with the contention that sales during production and gathering were not sales in interstate commerce within the meaning of the Act, the Court said:

. * * *, we believe that the legislative history indicates a Congressional intent to give the Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company.

Further in the same decision at page 684, the Court makes it clear that any language in Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U.S. 179, or Phillips Petroleum Co. v. Oklahoma, 340 U.S. 190, was not to be interpreted as contrary to its conclusions and findings therein. At page 684 the Court makes that certain by stating:

Petitioners cite our recent decisions in Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U.S. 179, and Phillips Petroleum Co. v. Oklahoma, 340 U.S. 190, as authority for the proposition that they may regu-

late the sales in question here and, hence, that such sales are not within the gap which the Natural Gas Act was intended to fill, * * * The Federal Power Commission did not participate in the Cities Service and Phillips Petroleum cases, the appellants there did not assert a possible conflict with federal authority under the Natural Gas Act, and consequently we expressly refused to consider at the time "[w]hether the Gas Act authorizes the Power Commission to set field prices on sales by independent producers, or leaves that function to the States . . ." 340 U.S., at 188-189.

The Supreme Court in its most recent pronouncement in Natural Gas Pipeline Co. v. Panoma Corporation, et al., 349 U.S. 44, reaffirmed its prior decisions by holding:

We disagree with the contention of the appellees that Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U.S. 179, and Phillips Petroleum Co. v. Oklahoma, 340 U.S. 190, are applicable here. In those cases we were dealing with constitutional questions and not construction of the Natural Gas Act. The latter question was specifically not passed upon in those cases.

The facts of record in this case, viewed in the light of the decisions of the Supreme Court interpreting the Natural Gas Act, make it plain that petitioners' sales of natural gas are sales in interstate commerce for resale and that the findings and the conclusions of the Presiding Examiner must be affirmed in accordance with this opinion.

The Commission orders:

Each of the petitions filed herein is hereby denied; the sales of each petitioner described in its petition are hereby dete. nined to be subject to regulation under the Natural Gas Act, and each of the petitioners herein is hereby determined to be a "natural-gas company" by reason of the sales described in its petition.

By the Commission. Commissioner Digby dissenting in part and concurring in part.

LEON M. FUQUAY,
Secretary.

Adopted: September 2, 1955.

Issued: September 9, 1955.

In the Matters of:
Deep South Oil Company of Texas, Humble Oil & Refining Company, Shell Oil Company.

Docket No. G-2952, Docket No. G-5261, Docket No. G-4671.

Digby, Commissioner, dissenting in part and concurring in part:

I cannot agree with the holding of the majority of this Commission that the Natural Gas Act applies to all sales of natural gas, whether to an interstate pipeline company or not, and whether occurring before, during, or after production or gathering has been completed, solely because some or all of the gas ul-

timately is transported in interstate commerce or sold in interstate commerce for resale by an interstate pipeline company. The holding represents an unwarranted assumption by this Commission of power not only not delegated to it but also specifically denied to it in Section 1(b) of the Act.

That the majority opinion represents an endeavor to assure jurisdiction by this Commission over all sales of natural gas ultimately transported in interstate commerce, or sold and ultimately resold in interstate commerce is apparent from its discussion of the regulation or taxing of "physical activities, facilities or properties used in the production and gathering of natural gas" by a state, and the further statement in the Examiner's decision that:

"It must be concluded, therefore, that in those instance in which a state or state commission exercises no control, regulation or limitation upon or over the price of gas at the well head, a sale of gas produced therefrom which results in the delivery thereof into a stream of commerce in which gas produced at a point in one state is transported and sold at a point outside thereof is a sale in interstate commerce of natural gas for resale within the meaning of the Natural Gas Act, whether, before, or after, such sale there shall be extracted therefrom liquid hydrocarbons and impurities, and whether such gas shall have been dehydrated, compressed or otherwise similarly processed." (Emphasis added.)

Further, the endeavor is made equally apparent inasmuch as the Examiner bases the existence of the

"gap" upon the non-existence of State or Federal regulation of the price of the gas. The "gap" is conceived to be determined by the exercise of power to fix rates rather than by existence of power. The Examiner said: "'Interstate commerce' as the term is used in the Act is, at least, coextensive with the 'gap' to which the Court referred." The basic error is in making the assumption that it is the assertion and exercise by a state of power to fix prices, rather than the existence of the power which determines the "gap".

Not only does the majority not explain away the clear error of the Examiner, but it emphasizes its error when it states: (p. 11)

"The existence or absence of such regulation (with respect to well head prices) is not determinative of our jurisdiction over the sales in question."

Lengthy quotations from Interstate Natural Gas Company v. Federal Power Commission, 331 U.S. 682, 690, and from Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672, serve only to indelibly impress how clearly inapposite is the quotation to the proposition suggested by the majority. The issue does not concern and never has concerned the degree of regulation asserted by a state or its opposition to federal regulation; the issue concerns the existence of state power at the time the Natural Gas Act was passed.

The majority determination accords to the decision of the Supreme Court in Wisconsin, et al., v. Phillips Petroleum Co., 347 U.S. 672, a holding with respect to issues not before the Court. It attributes to the

Court a reversal by it of specific language in Interstate Natural Gas Company v. Federal Power Commission, supra, with respect to the intended scope of Section 1(b), and it effectively rewrites the delegation of power so that the Act is now made applicable to "the sale of natural gas for resale in interstate commerce."

Recognition must be had that there may be and are sales made prior to completion of production or gathering whereby the gas is committed to and in interstate commerce. It would not be proper, therefore, to fix the point of completion of production and gathering as a jurisdictional determinant. The use of "business of production or gathering" as a jurisdictional criterion was specifically proscribed in the Phillips case. Of necessity, there must be some criteria, valid in law and capable of reasonable application by which our power shall be measured. Determination whether there has been a commitment of natural gas in interstate commerce will not only mark the beginning of the interstate commerce by practical as well as legal considerations but also permit reasonable administration of the Act and give recognition to the clear congressional intention to regulate "sales in interstate commerce for resale" as well as to the production and gathering exemption.

It is not enough to state that determination of applicability of the Act to the sales in question must recognize the extent to which Congress has asserted its power over interstate commerce and that the extent of power is not in issue. The power delegated to this Commission with respect to jurisdiction is not

co-extensive with the power of Congress over interstate commerce. Our function is to administer reasonably the Natural Gas Act within the limits of our statutory authority. Whether we believe that more effective regulation could be had with power to regulate all sales of all gas which is ultimately consumed in states other than where produced should not deter a finding of lack of jurisdiction in proper instances; nor should it cause us to make an interpretation which could only be made by a juxtaposition of the language of the statute which will permit such complete regulation.

Congress, when it enacted the Natural Gas Act, proscribed jurisdiction over all sales other than those "in interstate commerce for resale". It did not delegate power to the Commission to regulate sales "affecting" interstate commerce, sales "for" interstate commerce, or sales which may "burden" or "obstruct" or "tend to burden or obstruct" interstate commerce. The majority, however, assert jurisdiction over all such sales. Section 1(a) of the Act, the Declaration of Policy, recites that Congress acted with respect to "regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce." The scope of regulatory power delegated is specifically set forth in Section 1(b) of the Act:

"(b) The provisions of this act shall apply to the transportation of natural gas in interstate commerce to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation

or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

The scope of the Act must be determined by application of constitutional standards recognized at the time of enactment. In Federal Power Commission v. Panhandle Eastern Pipeline Company, 337 U.S. 498, 503, the Court said that the Act's coverage is determined by Section 1(b) and "does so in the light of the situation existing at the time." In Federal Power Commission v. East Ohio Gas Company, 338 U.S. 464, the Court said, with regard to the intended scope of the Act (p. 472), "but prior constitutional decisions, not what we have since decided or would decide today, form the measure of the gap which Congress intended to close by this Act. Illinois Gas Co. v. Public Service Co., 314 U.S. 498, 508; and see Parker v. Motor Boat Sales, 314 U.S. 244, 250."

Determination of "in interstate commerce" cannot rest upon the fact that at some subsequent time some of the gas may in some way become a part of the stream of natural gas being transported or sold in interstate commerce for resale. Nor is it sufficient that at the time of sale there was an awareness that the subject matter of the sale would ultimately so move. Bracht v. San Antonio & A. P. R. Co. (54 U.S. 489) cited by the majority involved a shipment by petitioner from Ingleside, Texas, to himself at Dallas, Texas. When the goods reached Dallas he requested

shipment to Kansas City. It was held that an action against the first carrier would not lie under the Interstate Commerce Act as the shipment was purely intrastate as far as it was concerned. Yet, if the majority of this Commission is correct, the entire movement was a continuous process and the first carrier should have been engaged in interstate commerce as regards the shipment. The point at which reassignment, in our cases resale in interstate commerce to an interstate pipe line, occurs is not regarded by the majority as of any significance. The Bracht case emphasizes the real meaning of "interstate commerce for resale" in the Natural Gas Act.

Work or services necessary to put the subject matter in a state of preparation and readiness for transportation is not of itself work or services rendered in interstate commerce. The point of time or place at which the journey "in interstate commerce" begins has been held consistently to be that point at which the subject matter has been "launched on its way to another State, or committed to a common carrier for transportation to such State * * *" (Coe v. Errol, 116 U.S. 517, 528).

In Oliver Iron Mining Co. v. Lord, 262 U.S. 172, three-fourths of the company's iron ore mining was open pit mining. Empty railroad cars were run from the railroad yards into the pits, loaded and returned to the yards, where they were hooked to trains which carried them into other states. The state levied an occupation tax on the company's mining operations. It was held that the iron ore did not enter interstate commerce until after the mining was completed. The

handling of the railroad cars to and from the mines was held to be a part of the mining operations.

In Chassanoil v. Greenwood, 291 U.S. 584, there was involved an ordinance of the City of Greenwood which levied a tax on persons engaged in the buying and selling of cotton in that city. Chassanoil was engaged in buying cotton in Greenwood for sale and shipment to other states and counties. The cotton was grown and ginned in various parts of the state and moved to warehouses in Greenwood. There the cotton was compressed and sold on warehouse receipts to purchasers. When brokers buy the cotton they have orders for its sale and delivery in other states. It was contended that all the cotton is in interstate or foreign commerce from the moment it leaves the gin, or at least from the moment it is purchased in Greenwood by the broker. The Court held (p. 587) that, "Ginning cotton, transporting it to Greenwood, warehousing, buying and compressing it there, are each, like the growing of it, steps in preparation for the sale and shipment in interstate or foreign commerce, but each step prior to the sale and shipment is a transaction local to Mississippi, a transaction in intrastate commerce."

In Federal Compress and Warehouse Company v. McLean, 291 U.S. 17, where a license tax on the operation of cotton compresses and warehouse in the circumstances described in Chassanoil v. Greenwood was sustained, the Court said (p. 21):

"Its journey interstate does not begin and so it does not become exempt from local tax until its shipment to points of destination outside the state."

The fact that an article is intended for export to another state does not render it "in interstate commerce." Crescent Cotton Oil Company v. Mississippi, 257 U.S. 129.

These decisions must be compared with Currin v. Wallace, 306 U.S. 1, and United States v. Darby, 312 U.S. 100, wherein the issue was the permissible assertion of congressional power under the commerce clause. See also Wickard v. Filburn, 317 U.S. 111.

Federal Trade Commission v. Bunte Brothers, 312 U.S. 349, is illustrative of judicial recognition of the sharp line of demarcation between existence of Congressional power and exercise of that power. In that case, the Federal Trade Commission attempted to apply the Act to certain sales.

The Federal Trade Commission Act, like the Natural Gas Act, delegates power to the Commission with respect to matters "in" interstate commerce. Holding that the Commission asserted power in excess of that delegated by Congress, the Court said (p. 355):

"An inroard upon local conditions and local standards of such far-reaching import as is involved here, ought to await a clearer mandate from Congress. The problem now before us is very different from that which was recently presented by United States v. Darby [312 U.S. 100]. We have there to consider the full scope of the constitutional power of Congress under the Commerce Clause in relation to the subject matter of the Fair Labor Standards Act. This case

presents the narrow question of what Congress did, not what it intended to do. And we merely hold that to read 'unfair methods of competition' in [interstate] commerce as though it meant 'unfair methods of competition in any way affecting interstate commerce', requires, in view of all relevant considerations, much clearer manifestation of intention than Congress has furnished."

Eureka Pipe Line Company v. Hallanan, 257 U.S. 26, United Fuel Gas Co. v. Hallanan, 257 U.S. 277, and Dahnke-Walker Milling Co. v. Bondurant, 257 U.S. 282, do not provide a different criteria. In each case the subject matter related to a course of business, or transaction which was an inherent part of such business, having as its purpose transportation of goods in interstate commerce.

In the Eureka Pipeline Co. and United Fuel Gas Co. cases the State of West Virginia prohibited transportation of oil in pipelines unless a charge of 2c per barrel had been paid. The charge was not upon the producer but upon the pipeline company which operated a pipeline in West Virginia which connected with and transported oil to pipelines in Ohio, Kentucky and Pennslyvania. The companies were required by law to keep enough oil in tanks and pipes to satisfy credits for oil purchased but not tendered for shipment. The Court held that "the pipeline company, not the producer, was the master of the destination of any specific oil. Therefore, its intent and action determined the character of the movement from its beginning and neither the intent nor the direction of the movement changed." The charge was held invalid as a regulation of interstate commerce.

The case does not hold that each sale by the producer was in interstate commerce. It holds merely that where the business (transportation of oil) is predominately interstate, the intrastate sale of oil could not render the business intrastate. This basic principle of law has long been recognized.

In the Dahnke-Walker Milling Company case, plaintiff, a Tennessee flour and feed mill operator, contracted with defendant at Hickman, Kentucky, for the purchase and sale of a crop of wheat, payment to be made in Kentucky and delivery to be on board cars of common carriers to be shipped to Tennessee. The defense asserted to an action for breach of contract was that plaintiff had not complied with a Kentucky statute imposing requirements upon a foreign corporation doing business within the state and that the contract was made in the course of intrastate business.

The Court held that the nature and purpose of the transaction was doing business in interstate commerce. It was said (p. 290):

". . . Where goods are purchased in one State for transportation to another, the commerce includes the purchase quite as much as it does the transportation."

Further, the Court stated (p. 291):

". . . In no case has the Court made any distinction between buying and selling or between buying for transportation to another State and transporting for sale in another State. Quite to the contrary, the

import of the decisions has been that if the transportation was incidental to buying or selling it was not material whether it came first or last."

The foregoing is clear recognition that the intent of the contracting parties to commit the goods in interstate commerce is a controlling factor. The contract involved in this case is a parallel to the contracts for the sale of natural gas between Humble and El Paso, which sale I hold to be in interstate commerce because there is a commitment of the gas to an interstate pipeline company.

The error of the majority in determining that the "gap" is to be measured by failure by a State to exercise power, and accordingly, holding Congressional exercise of power to embrace all sales becomes more apparent when the specific exemption of production or gathering and decisions of the Supreme Court with regard thereto are considered. The decisions indicate that Congress intended "in interstate commerce" to refer to sales of natural gas to interstate pipeline companies for resale.

The Court, in Federal Power Commission v. Hope Natural Gas Company, 320 U.S. 591, said, with respect to the evils intended by Congress to be remedied by the Act (p. 610):

". . . The investigation of the Federal Trade Commission had disclosed that the majority of the pipeline mileage in the country used to transport natural gas, together with an increasing percentage of the natural gas supply for pipeline transportation, had been acquired by a handful of holding companies.

State Commissions, independent producers, and communities having or seeking the services were growing quite helpless against these combinations. These were the types of problems with which those participating in the hearings were preoccupied. Congress addressed itself to those specific evils." (Emphasis added.)

Thus, the production and gathering of natural gas was not that portion of the natural gas industry which was the source of evils sought to be remedied. Further, "The Act was drawn with meticulous regard for the continued exercise of State power, not to handicap or dilute it in any way." Panhandle Eastern Pipe Line Co. v. Public Service Commission, 332 U.S. 507, 518. The scheme was of cooperative action between Federal and State agencies.

The Court, in Colorado Interstate Gas Company v. Federal Power Commission, 324 U.S. 581, did not pass on the issues here presented. It did hold that the Section 1(b) exemption was to be given meaning. It stated (p. 603) that the "provision precludes the Commission from any control over the activity of producing or gathering natural gas."

In Federal Power Commission v. Pahandle Eastern Pipe Line Company, 337 U.S. 498, the Commission sought to restrict the production and gathering exemption to purely physical activities of production and gathering. The Court held, however, (p. 504) that such a narrow meaning could not be ascribed to the words.

The Court, in Interstate Natural Gas Company v. Federal Power Commission, supra, recognized (p. 690) that there are sales "though technically consummated in interstate commerce," which may be "made during the course of production and gathering and are so closely connected with the local incidents of that process as to render rate regulation by the Federal Power Commission inconsistent or a substantial interference with the exercise by the State of its regulatory functions" that the jurisdiction of the Federal Power Commission does not attach. (Emphasis added.)

The majority of this Commission, however, refuses to recognize the existence of any sales of natural gas which is ultimately resold in interstate commerce which are not subject to the jurisdiction of the Commission. The Phillips decision did not disapprove or negative the language of a unanimous Court in the Interstate case. To the contrary, it cited and relied upon the case as controlling.

Acceptance of the hypothesis of non-jurisdictional sales in production and gathering defeats the hypothesis or assumption of the completeness of Commission jurisdiction with regard to all sales of natural gas where at least some portion of such gas eventually finds it way into the full-stream of interstate commerce in the transmission lines of an interstate transmission pipeline company.

The Interstate case, as such, merely holds, as does the Phillips case, that sales by a producer to an interstate pipeline company are subject to regulation under the Act.

In Interstate Natural Gas Company v. Federal Power Commission, supra, the nature of the purchases for sales was described as follows (pp. 684-5):

"Gas produced from petitioner's wells flows into petitioner's system of field pipe lines, moving first into branch lines, then into trunk lines, and finally into the main trunk lines from which delivery is made to the three purchasing companies. During the course of this movement, petitioner purchases gas from other producers in the field which gas is introduced into petitioner's system at designated points and is there commingled with the gas moving from petitioner's own wells. By far the larger part of the gas so purchased by petitioner has been gathered from various wells of the selling companies before delivery to petitioner is made. The gas moves through petitioner's system at well pressure. Shortly after the sales in question are completed, the gas is directed through the compressor stations of the purchasing companies and is there subjected to increased pressure in order that it may be moved to markets as far distant as Illinois. The entire movement of the gas from the wells to the purchasing companies through the compressor pumps and across the state lines is a continuous process without interruption for storage, processing or for any other purpose. All the gas sold in these transactions is destined for ultimate public consumption in States other than Louisiana."

With respect to such sales, the Court concluded (p. 688):

"Clearly the sales in question were a part of commerce being carried on between points in Louisiana

and points in other States. There is nothing in that language to suggest that Congress intended that sales consummated before the gas crosses a State line should not be regarded as being 'in' such commerce."

Regarding production and gathering, the Court said (p. 692):

"The gas moved by petitioner to the points of sales consisted of gas produced from petitioner's wells commingled with that produced and gathered by other companies and introduced into petitioner's pipeline system during the course of the movement. By the time the sales are consummated, nothing further in the gathering process remains to be done. We have held that these sales are in interstate commerce. It cannot be doubted that their regulation is predominantly a matter of national, as contrasted to local concern."

Speaking with respect to the Interstate case, the Court in the Phillips case remarked (pp. 680-1), that it had based its decision "on the broader ground that sales in interstate commerce for resale by producers to interstate pipeline companies do not come within the 'production or gathering' exemptions." (Emphasis supplied.)

The Supreme Court in Natural Gas Pipe Line Company of America v. Panoma Corporation, 349 U.S. 44, decided April 11, 1955, clearly evidenced the intended holding of the Phillips case when it stated:

"In this case Oklahoma has attempted to fix a minimum price to be paid for natural gas, after its production and gathering has ended, by a company which transports the gas for resale in interstate commerce. We held in Phillips Petroleum Company v. Wisconsin, 347 U.S. 672, 74 S. Ct. 792, 98 L. Ed. 1035, that such a sale and transportation cannot be regulated by a State but are subject to the exclusive regulation of the Federal Power Commission. The Phillips case, therefore, controls this one." (Emphasis supplied.)

The majority, however, seeks to read into that decision a determination of issues not before the Court.

The foregoing considerations lead to but one logical conclusion, viz., that the sales intended to be embraced by the Natural Gas Act are those by which natural gas is committed to interstate commerce. Otherwise, Congress has asserted its power over interstate commerce to the fullest as regards all matters incident to production or gathering save the regulation of the physical production and protection of correlative rights. This the Supreme Court has held it did not do.

The instant proceedings present for determination the jurisdictional status of several types of sales of natural gas.

The petition of Humble Oil & Refining Company seeks status determination with respect to sales of casinghead gas. The sales may be divided into three appropriate categories:

(1) Sales to a plant operator not an interstate transmission company under a standard casinghead gas contract (Ex. 26);

(2) Sales to an interstate pipeline company (El Paso Natural Gas Company) under the El Paso form of casinghead gas contract (Ex. 27); and

(3) Sales to a producer and gatherer not also an interstate transmission company pursuant to division orders (Ex. 28).

The petition of Shell Oil Company seeks status determination with respect to sales of casinghead gas and gas well gas. The sales may be divided into three appropriate categories:

(1) Sales of casinghead gas to a producer and gatherer not also an interstate transmission company (Phillips Petroleum Company):

(2) Sales of casinghead gas to one who is or upon commencement of sales will be an interstate transmission company (Texas Gas Pipeline Corporation); and

(3) Sales of gas well gas to one who is or upon commencement of certain sales will be an interstate transmission company (Texas Gas Pipeline Corporation).

The petition of Deep South Oil Company of Texas seeks status determination with respect to sales of casinghead gas and full-stream gas. The sales may be divided into three appropriate categories:

(1) Sales of casinghead gas to a producer and gatherer not also an interstate transmission company (Texas Gas Corporation);

(2) Sales of full-stream gas to a producer and gatherer not also an interstate transmission company (Texas Gas Corporation); and

(3) Sales of gas from a gas distillate well to one who is an interstate pipeline transmission company (United Gas Pipe Line Company).

The sales made by Humble all covered casinghead gas, or gas produced in association with oil from oil wells. Humble's typical operations for producing raw casinghead gas include the passage of the mixture of oil and gas which issues from the wellhead through flow lines from the respective wells to the lease separator. The crude oil and heavier liquids settle to the bottom of the separator and are drained off leaving a gaseous mixture of hydrocarbons known as raw casinghead gas.

We are here concerned only with the disposition of the casinghead gas, the principal component of which is methane (Tr. 137), the same material which constitutes fuel gas, the bulk of gas in interstate transmission lines (Tr. 138, 376). The record is replete with testimony establishing that safe and efficient movement of the gas through transmission lines requires that the compound be processed to remove those elements and that casinghead gas cannot be compressed and transported to the markets until this has been done. In addition, the various hydrocarbons constitutents of the casinghead gas have intrinsic value

which makes their recovery economically desirable (Tr. 376). Only the residue gas, composed principally of methane, is suitable for domestic and industrial use (Tr. 376).

Humble, in each of the 48 transactions under consideration, disposes of the casinghead gas by sale and delivery thereof through a meter at or near the lease separator.

The commodity sold and delivered to the purchaser at this point is a gaseous compound made up of numerous hydrocarbons. The price to be paid for the casinghead gas is based upon the amounts received by the processor from his sale of the liquid products recovered from the compound plus a portion of the net proceeds from his sale of any remaining residue gas.

The casinghead gas at the point of delivery passes into the "plant gathering lines" of the purchaser, and moves, commingled with casinghead gas from other leases, into a gas processing plant. In the plant the mass of casinghead gas is put through various mechanical and chemical operations which result in the segregation of the various hydrocarbon constituents and the removal of objectionable impurities and foreign material from the residue gas. The residue gas or methane is then ready for delivery to market.

All of the casinghead gas sold by Humble follows the above-outlined course from the wellhead to the outlet of the processing plant. The categorical differentiation noted at the outset arises from differ-

ences in the type of purchaser and differences in the type of contract of sale.

In the first category, covering 36 sales, the purchaser is a plant operator, engaged in the business of purchasing and at times producing casinghead gas, gathering and processing said gas, and selling the resulting products at the outlet of the plant. The sales to the plant operator are made pursuant to Standard Form Casinghead Gas Contracts (Ex. 26; Tr. 396). Title and control pass at the point of delivery, at or near the lease separator, with the exception of two deliveries which are made 2,000 or 3,000 feet from the separator on or adjoining Humble's lease (Tr. 397). Consideration is based upon the proceeds received from the plant operator's sales, and the richness and volume of casinghead gas delivered from the lease (Tr. 398). Disposition of the residue gas is not within the control of Humble. The purchaser may dispose of such gas as it pleases. It may commit some or all of the gas "in interstate commerce" or it may not.

This sale precedes gathering, processing and recovery of the merchantable fuel gas product which is fit to be committed to interstate transmission; it precedes the sale which does commit some or all of such gas in interstate commerce. It cannot be said to be a "sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use* * *." Such sale is patently not the type of sale held by the Supreme Court to be within the scope of the Natural Gas Act in the Phillips and Interstate cases.

The second category covers sales to an interstate pipeline company (El Paso Natural Gas Company) pursuant to a contract known as the El Paso form of casinghead gas contract (Ex. 27). The interstate pipeline company owns and operates the processing plant and has the right under the contract to take all surplus residue gas resulting from said processing into its pipe line. The revenue to be received by the producer for the casinghead gas is arrived at in substantially the same manner as in the Standard Form Casinghead Gas Contract, the exception being that the revenue to be received for sales of residue gas is a fixed amount depending upon the depth of the producing formation and the date of taking. Title and control pass at the point of delivery at or near the lease separator.

The distinguishing feature of the sales to El Paso is the contractual provision whereby all residue gas is committed to interstate transmission. A sale of this type, made pursuant to a contract executed between a working interest owner, or a lease or unit operator having power under an operating agreement to make such sale, and an interstate transmission pipeline company whereby the gas is committed to the interstate transmission system, appears to be the type of sale contemplated by the Natural Gas Act as interpreted by the Phillips decision, 347 U.S. 672, and, therefore, subject to the jurisdiction of the Commission.

The third category of Humble's transactions covers the sale by a lease operator of gas attributable to non-operating working interests owned by Humble. These sales are made pursuant to division orders.

The particular division order here is known as the Phillips division order and authorizes the lease operator to dispose of, either by purchase or sale, Humble's share of casinghead gas along with other casinghead gas produced from the lease (Ex. 28). The lease operator in those instances contracts with the purchaser, a plant operator not engaged in interstate transmission, for the sale of all casinghead gas produced from the lease. Humble's transactions in connection therewith, not being a commitment into an interstate transmission system, would also fall outside the scope of the Natural Gas Act.

Shell Oil Company is seeking status determination with respect to sales of both casinghead gas and gas well gas. These sales fall into three categories.

The first category covers sales of casinghead gas produced from 19 oil wells in the McElroy Field, Crane and Upton Counties, Texas. The operations necessary to the production of this casinghead gas are substantially the same as those hereinbefore outlined in describing Humble's sales of casinghead gas. Shell sells to Phillips Petroleum Company, which gathers and processes the casinghead gas produced from Shell's leases, together with casinghead gas from other leases. Delivery is made through a meter adjacent to the separator on the Shell lease (Ex. 11). Phillips, after processing, markets the products and residue gas in both intra and interstate commerce.

This sale by Shell is analogous to the sales in the first category by Humble, and, therefore, falls within the same jurisdictional ruling, i.e., not subject to the jurisdiction of the Commission.

Shell also proposes to make sales of gas produced in the Nome Field, Jefferson County, Texas, to Texas Gas Pipe Line Corporation, an interstate transmission company (Tr. 117). The sales from this field to Texas Gas Pipe Line have been hereinbefore categorized as two distinct types of sales, one covering casinghead gas and the other covering gas well gas. However, since both types of sales are covered by one contract (Ex. 9), they shoud be treated as one category.

It is significant in an analysis of Shell's sale of gas, both casinghead and gas well gas, to Texas Gas Pipe Line to note that Texas Gas Pipe Line Corporation is a subsidiary of Texas Gas Corporation (Tr. 85, 99). The parent company in this instance owns the processing plant through which the gas to be purchased by Texas Gas Pipe Line must flow to be processed and prepared for the interstate transmission and ultimate industrial and domestic use (Tr. 100).

By the terms of the gas sale contract between Shell Oil Company, as Seller, and Texas Gas Pipe Line Corporation, as Buyer, Shell "commits" to the performance thereof all of its "interest in gas in the non-associated gas reservoirs and in the associated gas or gas caps and the casinghead gas to be produced from the oil reservoirs situated in the Nome Field * * *." (Ex. 9) Thus, Shell's sales from the Nome Field are to an interstate transmission pipeline company, and, being committed to interstate commerce, are within the class of sales hereinbefore indicated as properly jurisdictional.

Deep South produces gas from both distillate and oil wells in the Big Hill Field, Jefferson County, Texas, which it sells to Texas Gas Corporation. Gas from a distillate well is known as "wet gas" or "full stream gas." It differs from casinghead gas principally in that it contains hydrocarbons of such nature that they condense at normal atmospheric pressure, whereas casinghead gas is produced in association with oil.

Texas Gas Corporation, the purchaser of gas produced by Deep South from the Big Hill Field, is engaged in the business of gathering and processing gas in the State of Texas, for resale to both intra and interstate transmission pipe-line companies. It owns and operates extensive facilities in this connection all within the State of Texas.

The sale by Deep South to Texas Gas Corporation of both casinghead and full stream gas is made pursuant to a single gas purchase contract. (Ex. 13) The contract provides for delivery at the well and for a fixed price for Mcf for "separator overhead gas".

Deep South's reserves are dedicated to the performance of this contract, but title and control pass to Texas Gas Corporation at the point of delivery. The record indicates that Texas Gas Corporation without knowledge or consent of Deep South subsequently dedicated (committed) the reserves covered by its contract with Deep South to the performance of Texas Gas Corporation's contract of sale to Texas Eastern Transmission Company, an interstate transmission pipe-line company. (Tr. 189-191).

The above described sale by Deep South, though hereinbefore divided into two categories, may be treated as one for the purpose of status determination. It is comparable to the sales in the first category by both Humble and Shell and the status determination thereof is controlling this sale by Deep South, i.e., non-jurisdictional.

The third category of sales by Deep South covers production from a gas distillate well in the Refugio Field, Refugio County, Texas, which is sold to United Gas Pipe Line Company, an interstate transmission pipe line company. The contract under which this sale is made (Ex. 16) provides for delivery at an appropriate point on United's line and for payment at a fixed price per Mcf. Delivery is made at the edge of Deep South's lease (Tr. 335), about 500 to 600 feet beyond the separator. (Tr. 347). United then moves the gas to a plant for processing after which it moves the residue gas to its compressor station at Refugio (Tr. 336). The record shows that the commingled gas stream that moves out of the compressor station goes into United Gas Pipe Line's "system" (Tr. 349 and 350). No evidence was offered relative to United's system. In this respect the majority properly conclude that the burden was upon Deep South to establish that the gas so sold was not transported or sold in interstate commerce for resale.

This sale made pursuant to a contract by which Deep South "commits" its gas to an interstate transmission pipe-line company is analogous to Humble's sale to El Paso and Shell's sale to Texas Gas Pipe Line Corporation, and must receive similar jurisdictional determination.

Having regard for the history of the legislation, the existing evils sought to be remedied thereby, the intention not to invade the power of the several states, the very pertinent language of the Court in the Panhandle cases, particularly 337 U.S. 498, the Interstate case and the Colorado Interstate case, it must be concluded that Congress did not intend "in interstate commerce" to embrace in all instances the movement of the methane through the sands toward the well bore, through the well pipe, separators, dehydrators, scrubbers, and many other pieces of processing equipment, the outlet side of a processing plant into a transmission line of the interstate transmission company and on to the ultimate burner tips.

The majority has determined that, in every instance where it can be demonstrated that any part of natural gas sold at a well head may become a part of a commingled stream which crosses a state line, the sale of the entire amount is a sale in interstate commerce for resale. Great reliance is placed upon the testimony of Mr. Schilthuis. a witness for Humble Oil & Refining Company; it is said (p. 4) that his testimony is "most conclusive". It is convlusive only that at some future time some other company may effect a sale of some part of the gas to an interstate pipe-line company. The issue is whether the sale itself is in interstate commerce, not whether some subsequent sale is in interstate commerce.

It is clear that Congress intended there should be a line of demarcation having a penumbra of sufficient breadth to permit reasonable administration of the

Act in the public interest without effectively negating the exemption of production or gathering and, at the same time, to give full recognition and effect to the salutary purposes of the Act. Certainly, it would appear proper to hold that in those instances where sales of natural gas are made pursuant to a contract executed by and between the owner of a working interest, or by an operator pursuant to power contained in an operating agreement, and an interstate pipe line transmission company, there has been a commitment of natural gas "in interstate commerce" for resale and the jurisdiction of the Commission attaches. Also, in those instances were sales of natural gas are made pursuant to a contract executed by the owner of a working interest or by an operator pursuant to power in an operating agreement, dedicating his share of all natural gas to be produced from designated reserves to an interstate pipe-line transmission company, there has been a commitment of natural gas "in interstate commerce" and the jurisdiction of the Commission attaches.

The broad language in the Phillips case, viz., "Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipe-line company or not and whether occurring before, during or after transmission by an interstate pipe-line company", cannot properly be considered as holding that the flow of natural gas from the sands and through the well is "in interstate commerce" and thus the sale at the wellhead is, in all instances, a sale in interstate commerce for resale, merely because some portion or all of the gas may ultimately find its way into the interstate pipe-line transmission

company's lines. To so hold effectively rewrites pertinent Sections of the Act to redefine our jurisdiction to encompass "sales of natural gas for resale in interstate commerce" or "sales of natural gas ultimately resold in interstate commerce."

.....

(S. L. Digby),
Commissioner.

Filed: September 2, 1955.

Issued: September 9, 1955.

APPLICATION FOR REHEARING.

Received Oct. 4, 4 27 PM '55 Federal Power Commission.

United States of America.
Federal Power Commission.

In the Matters of:
Deep South Oil Company of Texas, Shell Oil Company, Humble Oil & Refining Company.
Docket No. G-2952, Docket No. G-4671, Docket No. G-5261.

RE XG. BAKER,
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Attorneys for Petitioner,
Humble Oil & Refining Company.
725—15th Street, N. W.,
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October 3, 1955.

Comes now Humble Oil & Refining Company and files this, its Application for Rehearing of the order and accompanying Opinion No. 284, issued by the Federal Power Commission in the above-entitled proceedings on September 9, 1955, entitled "Opinion and Order Affirming Examiner's Decision," hereby peti-

tioning the Commission that it abrogate without hearing the September 9 order and Opinion No. 284, or after such hearing or oral argument or both, as to the Commission may seem appropriate, that the September 9 order and Opinion No. 284 be abrogated. As grounds in support of these pleas, Humble shows as follows:

I.

This Application for Rehearing is filed pursuant to Section 19(a) of the Natural Gas Act and Section 1.34 of the Commission's Rules of Practice and Procedure.

II.

The exact legal name of applicant is Humble Oil & Refining Company (Humble). a corporation organized and existing under the laws of the State of Texas, having its principal place of business at 1216 Main Street, Houston 1, Texas.

The names ond addresses of persons to whom communications are to be sent concerning this application are:

Carl Illig
Humble Oil & Refining Company
Post Office Box 2180
Houston 1, Texas.

Bernard A. Foster, Jr.
Ross, Marsh & Foster
725—15th Street, N. W.
Washington 5, D. C.

III.

Humble asserts that, within the meaning of Section 19(a) of the Natural Gas Act, it is aggrieved by the September 9 order and accompanying Opinion No. 284. Humble is thereby declared, with respect to the sales here involved, to be a "natural-gas company," and the Commission thereby formally determined such sales to be "subject to regulation under the Natural Gas Act." This jurisdictional determination formally determined Humble to be subject to all of the burdens of regulation under the Natural Gas Act and the Commission's Regulations thereunder, Humble being thus directed to comply with the requirements of such Act and Regulations.

IV.

In the first paragraph of its Opinion No. 284, the Commission referred to the decision of the Presiding Examiner, issued herein on April 5, 1955, and without any qualification whatsoever stated:

"* * * [W]e affirm the aforesaid decision of the Presiding Examiner."

In light of this unqualified affirmance, and to avoid needlessly burdening this Application Humble refers to its "Exceptions to Decision of Presiding Examiner & Brief of Humble Oil & Refining Company in Support of Exceptions," filed herein on May 23, 1955, a copy of which is attached hereto. By this reference thereto, Humble hereby incorporates in its entirety each and all of such Exceptions and Brief as fully and completely as though set forth verbatim herein.

In this Application, Humble relies upon each and every such Exception to the Presiding Examiner's decision of April 5, 1955, and its Brief filed in support thereof.

For reasons which it recited in the second paragraph of such Opinion No. 284, the Commission deemed it desirable to set forth its reasons for affirmance of the Presiding Examiner's decision. Humble submits that, in so doing, the Commission compounded the errors of the Presiding Examiner, committing independently further errors, to which the remainder of this Application will be addressed.

V.

In the second paragraph of its Opinion No. 284, the Commission characterized the type of sale here involved as being "made before the completion of 'production and gathering' (even though it was conceded that such was otherwise a sale in interstate commerce) * * * ' (p. 1).[1] With these parentheses. the Commission attributed a concession which Humble hereby expressly denies ever having made. Indeed, in the immediately succeeding paragraph of its Opinion No. 284, the Commission stated that Humble and other Petitioners maintain "that their sales of natural gas are not in fact sales in interstate commerce" (p. 1). Humble did and does maintain that its sales of casinghead gas, here involved, are not sales of

[1] The Commission's quotation of the words "production and gathering" is presumably intended as an excerpt from Section 1(b) of the Natural Gas Act. If that is so, the correct words are "production or gathering."

natural gas in interstate commerce for resale within the meaning of Section 1(b) of the Natural Gas Act.

VI.

On pages 2 and 3 of its Opinion No. 284, the Commission erred in denying Humble's claim that its sales of casinghead gas here involved are not sales of "natural gas" within the meaning of the Natural Gas Act.

The Commission places mistaken reliance on an excerpt from Mississippi River Fuel Corporation v. Federal Power Commission, 121 F.2d 159 (C.A. 8. 1941). The Court there held merely that the definition of "natural gas" in the statute to comprehend "any mixture of natural and artifical gas" embraced the send-out product of the purchasers from Mississippi, which product was a mixture wherein the natural gas purchased from Mississippi was an ingredient. This is obviously not relevant, in principle or otherwise, to a decision whether the Natural Gas Act applies to Humble's sale of casinghead gas. Equally irrelevant is the Commission's citation of Natural Gas Pipeline Co. of America v. Panoma Corp., 271 P.2d 354, ... Okla. ..... 1953).

VII.

The Commission committed error in holding that Humble's sales are "sales in interstate commerce for resale for ultimate public consumption" and not "within the exclusionary provisions of Section 1(b) of the Act" (p. 3). In this connection, the Commission committed further error in its analysis of testi-

mony by Humble's principal witness, Mr. Ralph J. Schilthuis (pp.3-4).

The record shows that Humble's counsel inquired of Mr. Schilthuis whether Exhibit No. 25 was a list of Humble's casinghead contracts with plant owners where part of the residue "may" find its way into interstate commerce (T. 401). Mr. Schilthuis' answer that "It does" was followed by this colloquy (T. 401):
"Presiding Examiner:

May find its way?

Mr. Illig:
My question was 'may find its way into interstate commerce.'

The Witness:
It does."

Thereafter, Humble's counsel asked Mr. Schilthuis the nature of the inquiry which he made of the several buyers of casinghead gas from Humble in order to ascertain whether a portion of the residue gas, on its sale by the plant owner, moved across the state line (T. 401). Mr. Schilthuis replied (T. 401-402):

"A. We—referring either to myself or members of the Staff in the Gas Division—made the inquiries in connection with all of the casinghead gas contracts that we have in effect between Humble and another party owning and operating a casinghead gas plant, to whom we are selling casinghead gas, as to whether or not any part of the gas, the residue from their plant, was sold by them to a pipe line that moved

the gas finally into interstate commerce, or across the state line, and from the information, the results of the inquiries we made, we determined that this list of contracts were the cases in which the gas under such casinghead contracts as we have does so move across state lines, or a part of the gas, at least, from the residue gas from the plant."

It is from this testimony that the Commission finds that the "commingled gas in whole or in part was sold by plant operators to interstate pipe line companies who transported that gas across state lines for ultimate public consumption" (p. 4). Actually, Mr. Schilthuis's testimony was to the effect that advice from the plant operators indicated that a portion of the residue gas derived from the processing operation might move across a state line. The residue gas derived from the processing or manufacturing operation is a distinctly different commodity from the commingled casinghead gas which is brought into the plant for processing, but the Commission does not recognize this difference. Actually, it ignores this difference so as to find that the casinghead gas, the subject of a local sale, is sold in interstate commerce for resale.

VIII.

In holding that Humble's sales are sales in interstate commerce, the Commission erred in concluding that there is an uninterrupted flow of natural gas from the wells of Humble across state lines (pp. 3, 1-6). Following each of Humble's sales of casinghead gas here involved, there is an undisputed interruption for processing. Accordingly, as the Commission itself

recognizes (p. 5), the Commission's conclusion regarding the absence of interruption is inconsistent with the statements of the Supreme Court in Interstate Natural Gas Co., Inc. v. Federal Power Commission, 331 U.S. 682, 685 (1947).

IX.

In his dissent, Commissioner Digby states that the majority opinion "represents an endeavor to assure jurisdiction by this Commission over all sales of natural gas ultimately transported in interstate commerce, or sold and ultimately resold in interstate commerce * * * " (p. 1). One of the several errors in such majority opinion which gives substance to this statement appears in this language of the majority (p. 6):

"Even if only a portion of the gas from the Petitioners' wells crosses the State line as an integral part of a commingled mass, it is immaterial for it has been said that the smallness of the operation in interstate commerce does not take it out of the sphere of Federal jurisdiction."

From this language, it appears that the Commission will permit its search for jurisdiction to attempt to embrace every sale from a producer's well where a portion of the gas later, anywhere and at any time, "crosses the State line." Thus, although Section 1(b) confers jurisdiction only over sales in interstate commerce, the Commission would expand coverage to include every sale, whether or not in interstate commerce, if the gas is ultimately resold in interstate commerce.

Moreover, even assuming the accuracy of the Commissions comment that "the smallness of the operation in interstate commerce does not take it out of the sphere of Federal jurisdiction" (p. 6), that assertion has no relevance to the issues in this case. It is indeed true that we are not concerned with the "smallness of the operation" but rather with whether any one of the sales here involved—large or small—is, in fact and in law, a sale in interstate commerce within the meaning of Section 1(b). And for this reason we are equally unconcerned with the "sphere of Federal jurisdiction," our concern focusing on the narrower question of the scope of Commission jurisdiction under Section 1(b) over sales "in interstate commerce."

These considerations point up the lack of relevance of the cases cited by the Commission, namely: Valvoline Oil Co. v. United States, 308 U.S. 141 (1939); Jersey Central Power and Light Co. v. Federal Power Commission, 319 U.S. 61 (1943). In the Valvoline case, the Court expressly confined its comments to Section 19a(a) and (e) of the Interstate Commerce Act, stating that the constitutionality of such requirements was settled and that the "smallness of the operation is immaterial" (308 U.S. at 146-147). In the Jersey Central case, the Court was not concerned with the "sphere of Federal jurisdiction," but rather with whether the facilities of Jersey Central were jurisdictional within the limits of Section 201(b) of the Federal Power Act, thus making Jersey Central a "public utility" within the meaning of Section 201 (e) of that Act. Any question of "smallness" was thus as irrelevant in Jersey Central as it was in Connecticut Light and Power Co. v. Federal Power Commission, 324 U.S. 515 (1945).

X.

The Commission erred in holding that "the fact that the Petitioners had no control over the gas after it was sold to the gatherers or processors and that they may have been indifferent as to whether any of the gas moved in interstate commerce is not controlling on the question of whether their sales are in interstate commerce" (pp. 6-7). Here again, the Commission's analysis significantly gives substance to Commissioner Digby's statement that the majority is endeavoring to assure jurisdiction "over all sales of natural gas ultimately transported in interstate commerce, or sold and ultimately resold in interstate commerce" (Dissent, p. 1). For the Commission seems persuaded by its erroneous conclusion that Petitioners "know to whom they are selling and that the sales by their purchasers are sales of gas which move (sic) in interstate commerce" (p. 7). Our issue centers on the legal character of the sale by Humble and not on the legal character of the sales by those purchasing from Humble. In other words, as Commissioner Digby indicates, the Commission has erroneously concluded that any sale is jurisdictional if the gas thus sold is "ultimately resold in interstate commerce."

It is indeed significant in this regard that the few cases here touched upon by the Commission did not include Superior Oil Co. v. Mississippi, 280 U.S. 390, 395 (1930), and omitted most of the other cases cited by Humble, which demonstrate the Commission's error.[2] The Commission's conclusion on this point is

[2] See pages 18-30, Brief of Humble Oil & Refining Company in Support of Exceptions.

at variance with the very case on which it principally relies, namely, Bracht v. San Antonio & A.P.R. Co., 254 U.S. 489 (1921). This contradiction is noted in Commissioner Digby's dissent (pp. 5-6).

With reference to the sales here involved, the Commission asserts that "Nothing further remained to be done by the Petitioners after those sales" (p. 7). It thus holds inapplicable Coe v. Errol, 116 U.S. 517 (1886) [3]; Oliver Iron Minning Co. v. Lord, 262 U.S. 172 (1923); and Chassaniol [4] v. Greenwood, 291 U.S. 584 (1934). In those cases, the operations involved were held to be local transactions in intrastate commerce in preparation for ultimate interstate movement of the commodity concerned. Here, Humble's sales and the ensuing processing are all local transactions in intrastate commerce in preparation for entry of the residue gas into interstate commerce. When the Commission says that nothing further remained to be done "by the Petitioners," it misses the point. Decisive importance here attaches to what is done, not who does it.

These same considerations point up the error of the Commission's conclusion that the sales in question are "for resale and not for manufacture" (p. 7). See also pages 13-18, Brief of Humble Oil & Refining Company in Support of Exceptions.

[3] This case is miscited by the Commission "Coe v. Erol, 116 U.S. 571."

[4] This name is misspelled by the Commission "Chassanoil."

XI.

The Commission says that its conclusion as to jurisdiction "is not predicated upon the existence or absence of state regulation with respect to wellhead prices" (p. 10). But this misses the mark. Importance attaches to the existence or absence of state power with respect to wellhead prices. Humble submits that the wellhead sales of casinghead gas here involved are local in character, sales in intrastate commerce, and for that reason exempted from Commission control and subject to state power to regulate, whether or not that power be exercised.

XII.

Humble submits that the Commission has misinterpreted Phillips Petroleum Co. v. the State of Wisconsin, 347 U.S. 672 (1954) and Natural Gas Pipeline Co. of America v. Panoma Corp., 349 U.S. 44 (1955).

The Commission cites the following extract from the Phillips case (p. 11):

"* * *, we believe that the legislative history indicates a Congressional intent to give the Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company."

In so doing, the Commission said that the Court was there "dealing with the contention that sales dur-

ing production and gathering were not sales in interstate commerce within the meaning of the Act" (p. 11). This is inaccurate. The Court was expressly dealing here with the contention "that Congress intended to regulate only the interstate pipeline companies" (347 U.S. at 681).

In this regard, it is significant that the point in the Phillips opinion at which the Court was in fact dealing with the Commission's finding "that Phillips' sales are part of the production and gathering process" (347 U.S. at 677), the Court concluded that such finding was "without adequate basis in law, and that production and gathering, in the sense that those terms are used in §. 1(b), *end before the sales by Phillips* occur" (347 U.S. at 678, emphasis supplied). In other words, the Court was at pains to make it clear that if was not ruling in Phillips on jurisdiction over sales made before the ending of production and gathering.

In the Panoma case, the Court held that the State of Oklahoma could not fix a minimum price on natural gas "after its production and gathering has ended." The Court also stated that "We held in Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672, that such a sale and transportation cannot be regulated by a State but are subject to the exclusive regulation of the Federal Power Commission."

At the very least, these assertions by the Court clearly leave open the qustion of jurisdiction over Humble's sales of casinghead gas here involved, which are local in character, which take place an-

terior to processing in preparing the commodity for entry into interstate commerce, thus being sales for manufacture and not for resale, which occur during production and gathering, and which are, we submit, sales in intrastate commerce.

XIII.

For all of the foregoing reasons, Humble asserts that the Commission erred in its order (p. 12), and that, instead, the Commission should adopt Humble's proposed Findings and Conclusions, as set forth on pages 30-33 of the Brief of Humble Oil & Refining Company in Support of Exceptions.

Respectfully submitted,
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Humble Oil & Refining
Company,
By (S.) CARL ILLIG,
(Carl Illig).

725-15th Street, N. W.,
Washington 5, D. C.

Dated at Houston, Texas October 3, 1955.

State of Texas,
County of Harris.

Carl Illig, being first duly sworn according to law, deposes and says that he is attorney for the Humble Oil & Refining Company, the Petitioner herein; that he is authorized by Petitioner to verify and file with the Federal Power Commission this Application for Rehearing; that he has read said application, and is familiar with the contents thereof, and that all averments of fact therein contained are true and correct to the best of his knowledge, information, and belief.

(S.) CARL ILLIG,
(Carl Illig).

Sworn to before me and subscribed in my presence by the said Carl Illig, this 3rd day of October, 1955.

(S.) V. E. CAMMACK,
Notary Public in and for Harris County, Texas.

My Commission expires: 6-1-57.

Certificate of Service.

I hereby certify that a copy or copies of the foregoing Application for Rehearing have been served on the attorneys of record in this proceeding by mailing same to them as follows:

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(S.) CARL ILLIG,
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October 3, 1955.

APPLICATION OF DEEP SOUTH OIL COMPANY OF TEXAS FOR REHEARING.

Received Oct. 7, 3 56 PM '55 Federal Power Commission.

United States of America.
Federal Power Commission.

In the Matters of:
Deep South Oil Company of Texas, Humble Oil & Refining Company, Shell Oil Company.

Docket No. G-2952, Docket No. G-5261, Docket No. G-4671.

Pursuant to Section 19(a) of the Natural Gas Act of 1938 and to Section 1.34 of the Rules of Practice and Procedure of this Commission, Deep South Oil Company of Texas now applies for a rehearing with respect to the order and accompanying opinion No. 284 issued herein by the Commission on September 9, 1955, and entitled "Opinion and Order Affirming Examiner's Decision". Deep South Oil Company of Texas hereby further requests that the Commission abrogate the aforesaid order and opinion No. 284 and grant the relief sought by Deep South in the pleadings, exceptions and briefs filed by Deep South herein. The errors made by the Commission in its order and opinion and the grounds and matters relied upon by Deep South in this application are as follows:

I.

The Commission erred in issuing the order set forth on page 12 of the Commission's opinion. In issuing the said order, the Commission erred (1) in denying the relief requested by Deep South in this proceeding, (2) in affirming the decision issued herein on April 5, 1955 by Examiner Edward B. Marsh, (3) in denying the exceptions to the said decision filed herein by Deep South on May 25, 1955, (4) in determining that the sales of gas made by Deep South are subject to regulation under the Natural Gas Act of 1938, and (5) in determining Deep South to be a "natural gas company" by reason of those sales. The order of the Commission is further erroneous insofar as it purports to require Deep South to comply with the provisions of Order No. 174-B of the Commission.

II.

In the first paragraph of page 1 of its opinion No. 284 the Commission refers to the decision issued herein on April 5, 1955 by Examiner Edward B. Marsh; such decision is thereafter erroneously and without qualification affirmed by the Commission. On page 12 of its opinion No. 284, the Commission again erroneously affirms the findings and conclusions of the said Examiner. In showing the error of this affirmance Deep South refers and relies upon the "Exceptions of Deep South Oil Company of Texas to the Decision of Examiner Edward B. Marsh" filed herein on May 25, 1955, hereby incorporating by reference each and all such exceptions as fully as if set forth verbatim herein.

III.

In the second paragraph of page 1 of its opinion No. 284, the Commission erroneously implies that "it was conceded" that the sales of gas made by the petitioners are sales in interstate commerce. Deep South has never conceded and does not now concede that the sales of gas made by Deep South are sales made in interstate commerce. On the contrary, Deep South pronounces erroneous the conclusion expressed by the Commission (in the sentence which begins at the bottom of page 6 and ends at the top of page 7 and also in the third, fifth, sixth, seventh and eighth sentences on page 7) that the sales of gas made by Deep South are sales made in interstate commerce. In showing the erreoneous nature of this conclusion Deep South refers to and relies upon the grounds and matters set forth in Paragraphs C and D of its exception XXI and in Paragraph F of its Exception XXII to the decision of Examiner Edward B. Marsh, these paragraphs being incorporated herein by reference as fully as if set forth verbatim herein.

IV.

On pages 3 and 4 of its opinion No. 284 the Commission discusses the testimony of Humble's witness Ralph J. Schilthius. At the bottom of page 4 of the opinion the Commission states "Hence, we find that the natural gas which is sold by the petitioners is sold in interstate commerce." Deep South asserts that this statement is erroneous not only in declaring the sales of gas made by Deep South to be sales in interstate commerce (see Paragraph III above) but also in implying that the testimony of the witness Schilthi-

us is to be considered as evidence relating to the operations of Deep South.

V.

On pages 4 and 5 of its opinion No. 284, the Commission quotes a sentence from Interstate Natural Gas Co. v. Federal Power Commission, 331 U.S. 682, 688, describing certain sales as "a part of commerce being carried on between points in (New Mexico and Texas) and points in other states". The Commission erred in declaring that this sentence is "pertinent" to a consideration of the evidence relating to Deep South. The Commission further erred in declaring on page 3 of the decision that there is "an uninterrupted flow of natural gas from the wells of Deep South . . . across state lines." The Commission further erred in failing to grant the additional or substitute finding proposed by Deep South in its Exception VIII to the decision of Examiner Edward B. Marsh. In support of Deep South's position that the Commission erred in these respects and that the destination of the gas produced by Deep South is not known and cannot be known, Deep South refers to and relies upon the grounds and matters set forth in Paragraphs B and C of its Exception I, in Paragraphs B and C of its Exception IV, in Paragraphs B and C of its Exception V, and in both paragraphs of its Exception VIII to the decision of Examiner Edward B. Marsh, these paragraphs (except insofar as they relate to the distillate well in Refugio County, declaratory relief as to which is no longer sought by Deep South) being incorporated herein by reference as fully as though set forth verbatim herein.

VI.

The Commission erred in failing to grant the additional or substitute findings proposed by Deep South in its Exceptions IX and X to the decision of Examiner Edward B. Marsh. In support of Deep South's position that the Commission erred in these respects and that the unprocessed gas sold by Deep South is neither suitable for transmission by pipeline over any substantial distance nor fit for ordinary use as commerical or domestic fuel, Deep South refers to and relies upon the grounds and matters set forth in Paragraphs B and C of its Exception IX and in Paragraphs D and E of its Exception X to the decision of Examiner Edward B. Marsh, these paragraphs being incorporated herein by reference as fully as if set forth verbatim herein.

VII.

The Commission erred in declaring on page 5 of its opinion No. 282 that the movement of gas sold by Deep South is not interrupted in the processing operation which takes place after the gas has been delivered by Deep South to its purchaser. The Commission further erred at pages 5 and 6 of its opinion in citing and relying upon Eureka Pipe Line Co. v. Hallanan, 257 U.S. 265, and Michigan-Wisconsin Pipeline Co. v. Calvert, 347 U.S. 157, as authority with respect to the significance of the processing to which the gas sold by Deep South is subjected. Neither of these decisions dealt with factual situations resembling the sales of gas made by Deep South. The Eureka case dealt with a statute taxing oil transmitted by

pipeline without any processing whatsoever. In the Michigan-Wisconsin case the Court held invalid a state tax the incidence of which was upon the delivery of gas into the mouth of an interstate pipeline; the Court further held that certain compressing and dehydration operations taking place after the gas had been committed to an interstate destination did not alter the interstate character of the movement. In support of Deep South's position that the Commission erred in these respects and that the processing described in the evidence relating to Deep South is of decisive importance in determining the character of the sales made by Deep South, Deep South refers to and relies upon the grounds and matters set forth in Paragraph F of its Exception XXII to the decision of Examiner Edward B. Marsh, this paragraph being incorporated herein by reference as fully as if set forth verbatim herein.

VIII.

The Commission erred in failing to grant the additional findings proposed by Deep South in its Exception XI to the decision of Examiner Edward B. Marsh. In support of Deep South's position that the Commission erred in this respect and that a significant volume of bas is produced by chemical change in the Winnie plant of the Texas Gas Corporation, Deep South refers to and relies upon the testimony of the witness Miller at pages 281 and 282 of the transcript of the testimony herein.

IX.

The Commission erred in failing to grant the additional or substitute finding proposed by Deep South in its Exception XX to the decision of Examiner Edward B. Marsh. The Commission further erred in declaring in the third through fifth full sentences on page 7 of the opinion that Deep South knows the destination of the gas that it sells. In support of its position that the Commission erred in these respects and that the arrangements made by Deep South for the sale of gas from its leases were not made with the knowledge, intent or purpose that the gas should be transported to any particular destination or category of destinations, Deep South refers to and relies upon the grounds and matters set forth in Paragraphs B, C, D and E of its Exception XX to the decision of Examiner Edward B. Marsh, these paragraphs (except insofar as they relate to the distiliate well in Refugio County, declaratory relief as to which is no longer sought by Deep South) being incorporated herein by reference as fully as if set forth verbatim herein.

X.

The Commission erred in stating in the last paragraph of page 6 of its opinion No. 284 that "where the question of intent is brought into issue such intent related to past transaction [sic]." The Commission further erred in citing and relying upon Bracht v. San Antonio and A. P. R. Co., 254 U.S. 489, as authority relating to the character of Deep South's operations. The Bracht case holds only that where neither party to a transaction anticipates interstate move-

ment, the transaction is not a transaction in interstate commerce; the decision does not purport to discuss any other situation. Cases indicating the relevance and importance of the question of intention in determining whether or not particular transactions occur in interstate commerce are cited in Paragraph C of Deep South's Exception XX to the decision of Examiner Edward B. Marsh. Deep South refers to and relies upon the cases cited in that paragraph, such paragraph being incorporated herein by reference as fully as if set forth verbatim herein.

XI.

The Commission erred in concluding at pages 3 and 7 of its opinion No. 284 that the sales of gas made by Deep South are sales "for resale" rather than sales for manufacture or sales for processing. In support of Deep South's position that the Commission erred in this respect and that the sales of gas made by Deep South are sales for processing rather than sales for resale, Deep South refers to and relies upon the grounds and matters set forth in Paragraphs E and F of its Exception XXII to the decision of Examiner Edward B. Marsh, these paragraphs being incorporated herein by reference as fully as if set forth verbatim herein.

XII.

The Commission erred in declaring in the first full paragraph on page 7 of its opinion No. 284 that certain named cases are not applicable to the facts presented by the evidence. In support of Deep South's position that the Commission erred in this respect and

that the cases referred to as well as numerous other cases decided by the Supreme Court have shown transactions similar in all significant respects to the sales of gas made by Deep South to be transactions "in intrastate commerce" rather than transactions "in interstate commerce", Deep South refers to and relies upon the grounds and matters set forth in Paragraphs B and C of its Exception XVI to the decision of Examiner Edward B. Marsh, these paragraphs being incorporated herein by reference as fully as if set forth verbatim herein.

XIII.

The Commission erred at page 6 of its opinion No. 284 in citing and relying upon Valvoline Oil Co. v. United States, 208 U.S. 141, and Jersey Central Power and Light Co. v. Federal Power Commission, 319 U.S. 61. Neither of these cases bears any relation to the questions presented in this proceeding. The Valvoline decision dealt with a pipeline which the record clearly established was used for the physical movement of oil from one state to another; in the Jersey Central case the record established that the electrical facilities in question were at times used for the instantaneous transmission of electric current from New Jersey to New York. See 319 U.S. at pages 65-66. Even without reference to numerous other distinctions, the Deep South situation is thus clearly distinguishable from the situations presented in the cases referred to.

XIV.

The Commission erred in declaring at pages 7 and 8 and again at pages 11 and 12 of its opinion No. 284

that the situation presented by the evidence relating to the operations of Deep South is controlled by the decisions of the Supreme Court in Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672, and Natural Gas Pipeline Co. v. Panoma Corp., 349 U.S. 44. As the Supreme Court itself pointed out in those decisions, those cases dealt with gas which, after the completion of production and gathering, was delivered into an interstate pipeline and thus committed to an interstate destination. The evidence relating to sales of gas made by Deep South shows that Deep South's sales are made from a production installation and before any gathering takes place; this evidence further shows that at the time the gas is delivered by Deep South it is not earmarked for or committed to interstate movement. Even without reference to numerous other distinctions, the Deep South situation is thus clearly distinguishable from the situations presented in the cases referred to.

XV.

The Commission erred in failing, at page 2 of its opinion No. 284, to include Deep South among the petitioners contending that the sales of gas described in the evidence are not sales of "natural gas" within the meaning of Section 2(5) of the Natural Gas Act of 1938. In its Exception XXIII to the decision of Examiner Edward B. Marsh herein, Deep South excepted to a conclusion by the said Examiner that the gas sold by Deep South was "natural gas" within the meaning of the Natural Gas Act, and Deep South now refers to, relies upon, and incorporates this exception herein by reference as fully as though set forth verbatim herein.

XVI.

The Commission erred at page 3 of its opinion No. 284 in declaring that the exclusionary provisions of Section 1(b) of the Natural Gas Act of 1938 do not apply to the sales of gas made by Deep South. In support of Deep South's position that the Commission erred in this respect and that the operations of Deep South, including its sales of gas, are covered by the provisions of Section 1(b) of the Act which exempt from the scope of the statute the "production or gathering" of natural gas, Deep South refers to and relies upon the grounds and matters set forth in Paragraphs B and C of its Exception XXIV to the decision of Examiner Edward B. Marsh, these paragraphs being incorporated herein by reference as fully as if set forth verbatim herein.

XVII.

At pages 15 and 22 of the dissenting opinion of Commissioner Seaborn L. Digby, Commissioner Digby discusses certain evidence relating to the sales of gas made by Deep South to the United Gas Pipeline Company from a gas distillate well in the Refugio Field in Refugio County, Texas. Deep South now reiterates the position taken by counsel at the oral argument of this proceeding: because the well in question is now exhausted, the equipment of the well dismantled, and all sales of gas discontinued,* Deep South has withdrawn its request for declaratory relief with respect to this operation.

* Sales of gas were discontinued in February, 1955, due to decreasing gas pressure and rapidly increasing water content. On March 23, 1955, the

XVIII.

Deep South asserts that it has been aggrieved within the meaning of Section 19(a) of the Natural Gas Act of 1938 by the foregoing errors of the Commission and by the order of the Commission determining Deep South to be subject to regulation under the Natural Gas Act of 1938.

XIX.

Deep South now requests the Commission to abrogate the order issued by it at page 12 of its opinion No. 284 and to grant in lieu of such order the following relief, which is quoted from Deep South's Exception XXV to the decision of Examiner Edward B. Marsh:

"Deep South proposes that the Commission enter an order herein as follows:

" 'It is hereby ordered:

" '(a) That petitioner's sales of natural gas to Texas Gas Corporation are not subject to regulation under the provisions of the Natural Gas Act.

" '(b) [Withdrawn—relates to sales to United Gas Pipeline Company]

---

leasehold was released by written instrument to the landowner, this instrument reserving salvage rights to the well equipment. In April, 1955, the well equipment including the tubing in the well was sold for salvage to two concerns in Refugio, Texas.

" '(c) That petitioner is not a "natural gas company" within the meaning of the Natural Gas Act.

" '(d) That petitioner is not subject to the provisions of Order No. 174-B.' "

Respectfully submitted,

NEWELL W. ELLISON,
HUGH B. COX,
HAROLD M. WILLCOX,
GEORGE H. BUSCHMANN,

701 Union Trust Building,
Washington 5, D. C.

RICHARD L. FRUCHTERMAN,
Counsel for Deep South Oil Company of Texas.

595 Madison Avenue,
New York, New York.

COVINGTON & BURLING,
701 Union Trust Building,
Washington 5, D. C.,
Of Counsel.

October 6, 1955.

City of Washington,
District of Columbia. ss.

Hugh B. Cox, being first duly sworn, deposes and says that he is attorney for Deep South Oil Company of Texas, that he is authorized to verify and file this Application for Rehearing, that he has read said Application and is familiar with the contents thereof, and that all facts contained therein are true to the best of his knowledge, information and belief.

(S.) HUGH B. COX.

Sworn to before me and subscribed in my presence by the said Hugh B. Cox this 6th day of October, 1955.

(S.) MARIE C. HORTON,
(Seal) Notary Public.

My commission expires: July 14, 1956.

Certificate of Service.

I hereby certify that I have this day served the foregoing Application of Deep South Oil Company of Texas for Rehearing upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each of the following:

Oliver L. Stone
R.C.A. Building
50 West 50th Street
New York, New York.

R. H. Whilden
Shell Building
Houston, Texas.

David T. Searls
Vinson, Elkins, Weems and Searls
Esperson Building
Houston, Texas.

Norman Duke
Dolrner, Rinehard, Stuart & Clammer
1001 Connecticut Avenue, N. W.
Washington, D. C.

Carl Illig
Post Office Box 2180
Houston, Texas.

Bernard Foster, Jr.
Ross, Marsh and Foster
723—15th Street, N. W.
Washington, D. C.

William N. Bonner, Jr.
General Counsel of Texas Gas Corporation
Prudential Building
Houston 25, Texas.
John T. Miller, Jr.
Gallagher, Connor & Boland
821—15th Street
Washington, D. C.
William J. Grove
Federal Power Commission
Washington, D. C.

Dated at Washington, D. C., this 6th day of October, 1955.

(S.) HUGH B. COX,
(Hugh B. Cox),
Counsel for Deep South Oil Company of Texas.

PETITION FOR REHEARING BY SHELL OIL COMPANY OF OPINION AND ORDER NO. 284 ISSUED ON SEPTEMBER 9, 1955.

Received Oct. 7, 3 20 PM '55 Federal Power Commission.

United States of America.
Federal Power Commission.

In The Matter Of:

Shell Oil Company.

Docket No. G-4671 (Consolidated with Docket No. G-2952).

DAVID T. SEARLS,
VINSON, ELKINS, WEEMS AND SEARLS,

Esperson Building,
Houston, Texas.

WILLIAM F. KENNEY,
OLIVER L. STONE,
Attorneys for Shell Oil Company.

50 West 50th Street,
New York 20, New York.

Petition for Rehearing.

Received Oct. 7, 3 20 PM '55 Federal Power Commission.

United States of America.
Federal Power Commission.

In The Matter Of:
Shell Oil Company.

Docket No. G-4671 (Consolidated with Docket No. G-2952).

Now comes Shell Oil Company (Petitioner) and shows that Opinion and Order No. 284 issued herein on September 9, 1955, is contrary to the law and the evidence and is erroneous; that Petitioner is aggrieved and injured thereby; and that a rehearing thereon should be granted.

The grounds relied upon in support of this petition are the following:

Specification of Errors.

1. The Commission erred in concluding that Petitioner's sales involved in this proceeding constitute sales of natural gas in interstate commerce for resale within the meaning of the Natural Gas Act. This conclusion is contrary to the law and the evidence; it infringes upon the power of the States to regulate local, intrastate activities, thus creating a conflict between State and Federal jurisdiction which, among other things, will deny to the States the right to im-

pose production, severance and gathering taxes on the production and gathering of natural gas, a local, intrastate function which traditionally and constitutionally has rested with the States; it confuses an "affecting" interstate commerce statute with an "in" interstate commerce statute, thereby resulting in the Commission legislating to itself a power not conferred upon it by the Natural Gas Act; it fails to apply a legal doctrine established by the United States Supreme Court in 1886 in Coe v. Errol, 116 U.S. 517 and consistently applied through the years with reaffirmation in 1954 in Michigan-Wisconsin Pipe Line Co. vs. Calvert, 347 U.S. 157.

2. The Commission erred in concluding that Petitioner's sale of casinghead gas to Phillips Petroleum Company in the McElroy Field is a sale in interstate commerce of natural gas for resale, where the casinghead gas is sold and delivered at the field separator in the field where the gas is produced, and must be gathered to a processing plant in the field, where it must be processed for manufacture into liquid products and residue gas and treated for removal of hydrogen sulphide before the by-product, residue gas, is sold and delivered to an interstate pipe line company.

3. The Commission erred in concluding that Petitioner's sale of casinghead gas and gas-well gas to Texas Gas Pipe Line Corporation in the Nome Field is a sale in interstate commerce of natural gas for resale, where the casinghead gas is sold and delivered at field separators and the gas-well gas is sold and delivered at the wellhead, and where the purchaser gathers this gas to a processing plant in or near the field where the gas is processed and de-

hydrated before the residue is sold and delivered to an interstate pipe line company.

4. The Commission erred in concluding that there is a continuous stream and flow of the gas from the time it leaves the well until it enters the interstate pipe line. This conclusion is contrary to the evidence. It completely disregards the intricate manufacturing process which the casinghead gas undergoes before a resulting by-product, residue gas, is fit for use as fuel and for transportation in high-pressure interstate pipe lines.

5. The Commission erred, as a matter of law, in concluding that there was a continuous flow of gas from the well into the interstate pipe line, hence the sale at the well was a sale in interstate commerce. This conclusion disregards the crucial distinction between movement and interstate commerce. When a product is moved from a point of origin in one State to a processing or manufacturing plant in that same State, at which point by-products of the processing are assembled for movement into another State, the movement from the point of origin to the point of processing is a movement in intrastate commerce, and a sale of casinghead gas to a processor with delivery at the point of origin of this local movement is not a sale in interstate commerce, hence is not covered by the Natural Gas Act. The fact that there is continuity of movement of some of the constituent elements of the original product from the point of origin through the manufacturing process, does not alter the intrastate character of the original movement. Utah Power and Light Company vs. Pfost, 286 U.S. 161; U.S. vs. Yellow Cab Company, 332 U.S. 218.

6. The Commission erred in concluding that Petitioner's sale to Phillips is a sale for resale and not a sale for manufacture. This conclusion is contrary to the law and the evidence.

7. The Commission erred in concluding that the casinghead gas sold by Petitioner is the same product as the residue gas which the plant operator later sells to the interstate pipe line company. This conclusion is contrary to the evidence.

8. The Commission erred in concluding that the product which Petitioner sells to Phillips is "natural gas" within the meaning of the Natural Gas Act. This conclusion is contrary to the law and evidence.

9. The Commission erred in concluding that Petitioner's sales involved in this proceeding do not come within the production and gathering exemption of Section 1(b) of the Natural Gas Act. This conclusion is contrary to law.

Wherefore, Petitioner prays that a rehearing be granted on Opinion and Order No. 284 and that the same be rescinded and set aside and that an Order be issued declaring that the Commission has no jurisdiction over Petitioner's sales involved in this proceeding.

Respectfully submitted,
DAVID T. SEARLS,
VINSON, ELKINS, WEEMS
AND SEARLS,

Esperson Building,
Houston, Texas.

WILLIAM F. KENNEY,
OLIVER L. STONE,

By OLIVER L. STONE,
(Oliver L. Stone),
Attorneys for Shell Oil Company.

50 West 50th Street,
New York 20, New York.

State of New York,
County of New York. ss.

Before me the undersigned authority on this 6th day of October, 1955, personally appeared Oliver L. Stone who being by me first duly sworn on his oath says:

That he is attorney for Shell Oil Company and is authorized to make this affidavit; that the facts set forth in the foregoing Petition are true and correct.

OLIVER L. STONE,
(Oliver L. Stone).

Subscribed and sworn to before me this 6th day of October, 1955.

ELIZABETH L. ESPOSITO,
Notary Public, State of New York.

No. 24-6204300.
Qualified in Kings County.
Certificate filed in New York County.
Commission Expires March 30, 1956.

Certificate.

I hereby certify that I have this day served the foregoing Petition for Rehearing upon parties of record in this proceeding by mailing a copy thereof properly addressed to:

Hugh B. Cox
Richard L. Fruchterman
Dale E. Doty
Norman Duke
Carl Illig
Bernard Foster, Jr.
William Bonner, Jr.
John T. Miller, Jr.
William J. Grove
Phoebe E. Gordon

Dated at New York this 6th day of October, 1955.

OLIVER L. STONE,
(Oliver L. Stone),
Attorney for Shell Oil Company.

ORDER DENYING REHEARING.

United States of America.
Federal Power Commission.

In the Matters of:
Deep South Oil Company of Texas, Shell Oil Company, Humble Oil & Refining Company.

Before Commissioners: Jerome K. Kuykendall, Chairman; Seaborn L. Digby, Frederick Stueck and William R. Connole.

Docket No. G-2952, Docket No. G-4671, Docket No. G-5261.

Deep South Oil Company of Texas and Shell Oil Company on October 7, 1955 and Humble Oil & Refining Company on October 4, 1955, each filed an application for rehearing of Opinion No. 284 and accompanying order issued September 9, 1955. These applications, relying on the same facts heretofore asserted, advance the same arguments previously made by Applicants and already considered by the Commission. The evidence of record respecting each Applicant's operations clearly shows that Applicants' sales of natural gas are sales in interstate commerce for resale under the provisions of the Natural Gas Act. No applicant anywhere in its application for rehearing contends that the Commission's findings are in any way insufficient.

The Commission finds:

No new facts have been presented or alleged and no new principles of law have been set forth which either were not fully considered by the Commission before it adopted its Opinion and accompanying order issued September 9, 1955, or having now been considered, warrant rehearing or modification.

The Commission Orders:

The applications of Deep South Oil Company of Texas in Docket No. G-2952, Shell Oil Company in Docket No. G-4671, and Humble Oil & Refining Company in Docket No. G-5261 for rehearing of the Opinion and accompanying order issued September 9, 1955 herein, be and the same are hereby denied.

By the Commission. Commissioner Digby dissenting.

J. H. GUTRIDE,
Acting Secretary.

Adopted: November 2, 1955.

Issued: November 4, 1955.

SUPPLEMENTAL TRANSCRIPT OF RECORD.

UNITED STATES
COURT OF APPEALS
FIFTH CIRCUIT.

No. 15,849

DEEP SOUTH OIL COMPANY OF TEXAS,

Petitioner,

versus

FEDERAL POWER COMMISSION,

Respondent.

Petition for Review of Order of The Federal Power Commission, Washington, D. C.

(SUPPLEMENTAL RECORD RECEIVED JAN. 27/56.)

In the United States Court of Appeals for the Fifth Circuit.

Humble Oil & Refining Company, Petitioner,
versus No. 15884.
Federal Power Commission, Respondent.

Shell Oil Company, Petitioner,
versus No. 15900.
Federal Power Commission, Respondent.

Vol. 7.

This material is filed as a supplement to the certificate of transcript of record before the Federal Power Commission in the Matters of Deep South Oil Company, Docket No. G-2952, Humble Oil & Refining Company, Docket No. G-5261, and Shell Oil Company, Docket No. G-4671, filed with this Court in Cause No. 15,849, Deep South Oil Company of Texas, Petitioner, v. Federal Power Commission, Respondent.

SUPPLEMENTAL CERTIFICATE OF TRANSCRIPT OF THE RECORD.

Filed Jan. 27, 1956.

In the United States Court of Appeals for the Fifth Circuit.

Deep South Oil Company of Texas, Petitioner,
v. No. 15,849.
Federal Power Commission, Respondent.

Humble Oil & Refining Company, Petitioner,
v. No. 15,884.
Federal Power Commission, Respondent.

Shell Oil Company, Petitioner,
v. No. 15,900.
Federal Power Commission, Respondent.

Pursuant to the provisions of Section 19 (b) of the Natural Gas Act, the Federal Power Commission, in connection with the above-entitled proceedings, hereby certifies that the documents described below and attached hereto, together with the documents heretofore filed with this Court constitute the transcript of the record before the Commission In the Matters of Deep South Oil Company of Texas, Humble Oil & Refining Company and Shell Oil Company, Docket Nos. G-2952, G-5261 and G-4671.

Description of Document	Volume	Page
Petition of Humble Oil & Refining Company for a declaratory order, Docket No. G-5261, filed November 26, 1954.	7	431
Petition of Kansas Natural Gas, Inc. for leave to intervene, filed December 1, 1954.	7	1546
Petition of Shell Oil Company for a declaratory order, Docket No. G-4671, filed November 5, 1954.	7	450
Motion of Shell Oil Company to consolidate for hearing petition for declaratory order with petition of Deep South Oil Company for declaratory order in Docket No. G-2952, filed November 9, 1954.	7	1582

By the Commission.

In witness whereof I have hereunto subscribed my name and caused the seal of the Federal Power Commission to be affixed this 25th day of January, 1956, at Washington, D. C.

LEON M. FUQUAY,
Secretary.

PETITION FOR DECLARATORY ORDER TO REMOVE UNCERTAINTY CONCERNING SALES OF CASINGHEAD GAS AT OR NEAR THE WELL ARISING FROM THE ISSUANCE OF ORDER NO. 174-A AND FOR DECLARATION OF STATUS.

Received Nov. 26, 1954, Federal Power Commission.

United States of America.
Federal Power Commission.

In the Matter of:
Humble Oil & Refining Company.
Docket No. G-5261.

REX G. BAKER,
NELSON JONES,
CARL ILLIG,

P. O. Box 2180,
Houston 1, Texas.

BERNARD A. FOSTER, JR.,
ROSS, MARSH & FOSTER,
Attorneys for Petitioner,
Humble Oil & Refining Company.

725—15th Street, N. W.,
Washington 5, D. C.

November 26, 1954.

Now comes Humble Oil & Refining Company (hereinafter referred to as Petitioner) and seeks this declaratory order pursuant to Section 1.7(c) of the General Rules of Practice and Procedure of the Commission and Section 5(d) of the Administrative Procedure Act (5 U.S.C.A. 1004(d)) [1] to remove the uncertainty, as herein set forth, arising from the issuance on August 6, 1954, by the Commission of Order No. 174-A (hereinafter referred to as the Order), and for declaration of status. In support of this petition, it is respectfully shown:

I.

Petitioner is a corporation incorporated under the laws of the State of Texas with its principal place of business at 1216 Main Street, Houston, Texas. It is authorized to do business in a number of other states of the union and is engaged in the business of exploring for, producing, refining and marketing petroleum and its products. Petitioner is not engaged in the business of transporting natural gas in interstate commerce.

II.

In the course of its exploration and producing activities, Petitioner has discovered large reserves of crude oil. In the reservoir in solution with such crude oil is certain gas composed primarily of hydrocarbons

[1] Section 5(d) of the Administrative Procedure Act reads: "The agency is authorized in its discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty."

of the paraffin series. Such gas, upon being separated from the oil, is known in the industry as "casinghead gas." It is impossible to produce the crude oil without also producing some of such casinghead gas. Casinghead gas performs a function in moving the oil to the well bore and through the bore to the surface of the well. Upon reaching the wellhead, the mixture of crude oil, casinghead gas and water passes from the well through flow lines into a separator located in the vicinity of the well. In passing through the separator the water and the crude oil separate themselves from the gas as changes in pressure and temperature occur. The casinghead gas which emerges from the separator contains liquefiable hydrocarbons and frequently varying amounts of hydrogen sulphide, water and impurities. Disposition of such casinghead gas varies between fields. In some instances it may be used for fuel in the field. In other cases it may be reinjected into the reservoir for pressure maintenance or used for gas lifting of oil. When a market is available, such casinghead gas is sold either at the wellhead or immediately upon leaving the separator.

III.

In the course of its business, Petitioner produces substantial quantities of casinghead gas and in many instances has sold or disposed of casinghead gas to buyers with whom Petitioner has no corporate affiliation or connection. Such buyers own and operate plants for the manufacture of gasoline and other products from such casinghead gas, and Petitioner disposes of its casinghead gas to such plant operators for that purpose.

IV.

Under the form of casinghead gas contract normally employed by Petitioner in its sales of casinghead gas to such buyers, title to the casinghead gas passes to the buyers near the separators on the leases. Upon delivery of the gas to such buyers, in most instances, it is moved from the separators, along with other casinghead gas, to various gasoline plants. In the operations conducted in such a plant, natural gasoline and other liquefiable hydrocarbons are extracted from the casinghead gas and, where necessary, the resulting residue gas is put through a treater which sweetens the gas by removing the hydrogen sulphide and other impurities. The residue gas remaining after the conclusion of such operation and which is not returned to the leases from which produced is sold by the buyers under separate sales contracts to various companies. Such companies often transport such residue gas into other states for resale for ultimate public consumption.

V.

Petitioner has the right, under the form of casinghead gas contract normally entered into by it, to have returned to it for use on its leases a volume of the residue gas remaining after the plant operations above described, but Petitioner in most instances is taking relatively small volumes of such gas for that purpose. The compensation received by Petitioner for its casinghead gas under such type contract is determined by a formula or contract provisions which take into account the value of the liquid hydrocarbons recoverable or recovered from the casinghead gas

and in the event the buyer sells the available residue gas, which he may do, Petitioner receives as a part of the price for its casinghead gas an amount equivalent to a given percentage of the net proceeds of the sale by the buyer of such residue. Petitioner has no voice, however, in determining if the surplus residue gas shall be sold and, if so, to whom and at what price.

VI.

Attached hereto, marked Exhibit "A", is a copy of one of Petitioner's casinghead gas contracts, being the contract dated January 7, 1941, between Petitioner as seller and Shell Oil Company as buyer covering the casinghead gas from a certain lease in Yoakum County, Texas. As indicated above, Petitioner has entered into a number of other casinghead gas sales agreements with other buyers relating to the casinghead gas produced from other properties in the territory in which Petitioner operates. There are some differences between the forms of casinghead gas sales contract employed in these sales but in their essential provisions the contracts and the operations with respect to the handling and processing of the casinghead gas and the disposal of the residue are as outlined above.

VII.

Petitioner is uncertain whether the Natural Gas Act as construed by the Courts is intended to apply to the sale of casinghead gas under contracts of the type herein described. In addition, it is uncertain whether Order No. 174-A issued by the Commission

is intended to apply to such contracts. It is Petitioner's view that the sale of casinghead gas under a casinghead gas contract is not covered by the Natural Gas Act and by Order No. 174-A for the following reasons:

1. The sales of casinghead gas are not in interstate commerce.

2. The sales involved are not for resale but are sales for processing.

3. The casinghead gas sold by Petitioner is not the same product as the surplus residue gas which is sold by the buyer after the intervention of processing.

4. The sales of casinghead gas and all facilities used in consummating such sales are within the production and gathering exemption of 1(b) of the Natural Gas Act.

VIII.

Petitioner on August 12, 1954, filed with the Commission its Application for Rehearing on the Commission's Order No. 174-A, raising therein, among other things, the uncertainty existing with reference to whether such Order purported to cover sales of casinghead gas herein described. In response to Petitioner's telegraphic inquiry of November 3, 1954, the Commission by telegram of November 5, 1954, advised Petitioner that its Application for Rehearing was still under consideration and that it would inform Petitioner when that Application was finally acted upon. Because of the uncertainty relating thereto and

because of the severe penalties imposed by Section 21 of the Natural Gas Act, Petitioner has, or before December 1, 1954, will have filed its casinghead gas contracts where any part of the residue gas moves in interstate commerce with the Commission as original rate schedules and has, or will have before such date, filed applications for certificates of public convenience and necessity as to such contracts. All of such filings are made under protest and are subject to the objections to Order 174-A set forth in Humble's Application for Rehearing hereinabove referred to.

IX.

The names and addresses of person to whom communications are to be sent in regard to this petition are:

Carl Illig
P. O. Box 2180
Houston 1, Texas.
Bernard A. Foster, Jr.
725—15th Street, N. W.
Washington 5, D. C.

X.

Wherefore, in the light of the foregoing, Petitioner respectfully requests that the Commission:

1. Issue a declaratory order declaring whether or not it is asserting jurisdiction over the sales of casinghead gas made pursuant to Petitioner's casinghead gas contracts referred to herein and whether Order No. 174-A is intended to apply to such sales of casinghead gas.

2. Determine Petitioner's status as to such casinghead gas sales and that as to such sales, declare that Petitioner is not a natural gas company under the Natural Gas Act.

Respectfully submitted,
REX G. BAKER,
NELSON JONES,
CARL ILLIG,

P. O. Box 2180,
Houston 1, Texas.

BERNARD A. FOSTER, JR.,
Attorneys for Petitioner,
Humble Oil & Refining Company,

By (S.) CARL ILLIG,
(Carl Illig).

725—15th Street, N. W.
Washington 5, D. C.

November 24, 1954.

United States of America,
District of Columbia. ss.

Bernard A. Foster, Jr., being first duly sworn according to law, deposes and says that he is attorney for Humble Oil & Refining Company, the Petitioner herein, that he is authorized by Petitioner to verify and file with the Federal Power Commission this "Petition for Declaratory Order to Remove Uncertainty Concerning Sales of Casinghead Gas at or near the Well arising from the Issuance of Order No. 174-A and for Declaration of Status"; that he has read said petition and is familiar with the contents thereof, and

that all averments of fact therein contained are true to the best of his knowledge, information and belief.

(Signed) BERNARD A. FOSTER, JR.,
(Bernard A. Foster, Jr.).

Sworn to before me and subscribed in my presence by the said Bernard A. Foster, Jr. this 26th day of November, 1954.

(Signed) ELIZABETH MAYNARD,
(Elizabeth Maynard),
(Seal) Notary Public.

My Commission Expires: September 14, 1958.

EXHIBIT "A".

Form S. R.

Shell Oil Company
Midland Area
General Offices
Petroleum Building
Midland, Texas

Mailing Address
P. O. Box 1509
Midland, Texas

October 26, 1949

Re: L. P. Bennett.

Humble Oil & Refining Company
Humble Building
Houston 2, Texas

Attention: Mr. Jno. Sue.

Gentlemen:

This has reference to the casinghead gas contract dated Jan. 7, 1941, as subsequently amended, cover-

ing the purchase by us of casinghead gas produced from your L. P. Bennett lease in the Wasson Field in Yoakum County, Texas.

We are in the process of enlarging our Wasson Gasoline Plants which, when completed, will include facilities for the recovery of a high percentage of desirable hydrocarbons contained in the gas, including propane which, heretofore, has not been recovered. As you will participate in the value of the propane recovered, we are attaching to each copy of this letter our printed form of rider entitled "Butane and Propane" under which settlement for butane and/or propane recovered from the casinghead gas purchased from this lease after November 1, 1949, is to be made.

It is agreed between you and us that one of these riders shall be attached to each copy of the above-mentioned contract as Paragraph Numbered 25 and effective November 1, 1949, shall become a part thereof and as of that date shall supersede and replace that paragraph of said contract which now bears the Number 25 and is entitled "Butane." It is further agreed that effective November 1, 1949, the butane provisions of this rider shall cancel and terminate all prior agreements and amendments thereto which provide a basis for payment for butane recovered from said casinghead gas.

Said contract as heretofore and as herein amended shall remain in full force and effect. If you are agreeable to the foregoing, please indicate your acceptance thereof by signing three copies of this letter in the space provided, initialing each rider attached thereto, and returning the accepted copies of the letter to us. The fourth copy is included as a temporary file copy for you. A fully executed copy of the letter will

be returned to you after it has been signed by Coltexo Corporation.

Yours very truly,
SHELL OIL COMPANY,
By B. W. RYAN,
Attorney-in-Fact.
COLTEXO CORPORATION,
By C. E. KAYSER,
President.

Checked and Approved:

Accepted and Agreed to this 15th day of November, 1949.

HUMBLE OIL & REFINING COMPANY,
By (Illegible),
Director and Manager, Production Department.

Approved: W.W.R., JC., Form DHG.

25—Butane and Propane—It is agreed that in the event Buyer manufactures excess butane and propane, or either of them as hereinafter defined, from the casinghead gas delivered to Buyer hereunder, Seller shall receive additional payment for said casinghead gas in accordance with the following:

If butane, propane, and/or a butane-propane mixture, as defined in the Natural Gasoline Association of America Liquefied Petroleum Gas Specifications and Test Methods (1940) or the latest revision thereof, is manufactured as a separate product, in addition to natural gasoline, at said plant, and/or there is manu-

factured at said plant a natural gasoline having a Reid vapor pressure in excess of 26 pounds, then in any such event, ll butane, propane, and/or butane-propane mixtures manufactured and saved in excess of the amount of such products which would have been normal constituents of 26 pound Reid vapor pressure natural gasoline, if all the natural gasoline manufactured at the plant had been 26 pound material, shall be considered excess butane and/or propane hereunder.

The following illustrates the method to be used in determining the total quantity of excess butane and/or propane manufactured and saved at the plant:

(1) During any period of time that all of the natural gasoline manufactured at said plant has a Reid vapor pressure of 26 pounds, then all of the butane, propane, and/or butane-propane mixture manufactured and saved as a separate product during such period shall be considered as excess butane and/or propane.

(2) During any period of time that the natural gasoline manufactured at said plant has a Reid vapor pressure of less than 26 pounds, then the calculated quanity of butane and/or propane which would be necessary to raise the vapor pressure of such natural gasoline to 26 pounds shall be deducted from the total quantity of butane, propane, and/or butane-propane mixture manufactured and saved as a separate product during such period, and the resulting quantity shall be considered as excess butane and/or propane.

(3) During any period of time that the natural gasoline manufactured at said plant has a Reid vapor pressure of more than 26 pounds, then all of the butane, propane, and/or butane-propane mixture manufactured and saved as a separate product during such period shall be considered as excess butane and/or propane; and further, the amount of excess butane and/or propane contained in such natural gasoline having a Reid vapor pressure of more than 26 pounds shall be computed by deducting from the total of such finished product that calculated portion of the finished product that is convertible to 26 pound material, and the resulting quantity shall be considered as excess butane and/or propane.

Buyer shall pay to Seller, in addition to the amounts payable under Article 10 hereof, the amount hereinafter specified for that portion of such excess butane and/or propane attributable to the casinghead gas purchased from the above described lease. Inasmuch as Buyer is also purchasing casinghead gas from others for processing in said plant, it is agreed that in determining the portion of the total quantity of excess butane and/or propane, as above defined, for which Seller is entitled to payment, there shall be used as a multiplier of the total amount of excess butane and/or propane manufactured and saved at said plant during each month, determined as hereinabove specified, a fraction whose numerator shall be the number of gallons of gasoline contained in the casinghead gas delivered by Seller hereunder during such month, ascertained by field tests as provided in Article 8 hereof, and whose denominator shall be the total number of gallons of gasoline contained in all of the casinghead gas, ascertained in the same

manner, processed in said plant during the same month. When commercial propane, as defined in the Natural Gasoline Association of America Liquefied Petroleum Gas Specifications and Test Methods (1940) or the latest revision thereof, is manufactured and saved at said plant as a separate product, the calculation therefor shall be separate and apart from the calculation for eycess butane and/or butane propane mixtures, but the latter products shall be regarded as butane and there shall be only one calculation therefor.

Such additional payments shall be made at the same time as other payments hereunder, and the amount of each such additional payment shall be the aggregate of the sums obtained by multiplying the respective volumes of excess butane and propane for which Seller is entitled to payment as above provided by the respective average net sales price per gallon at such plant for the butane and propane manufactured, saved, and sold at said plant and removed therefrom during the month covered by said payment, and by then multiplying each of such results by whichever of the following percentages is applicable:

(a(15% when said average net sales price is 2c per gallon or less;

(b) 20% when said average net sales price is more than 2c but less than 4c per gallon:

(c) 25% when said average net sales price is 4c but less than 6c per gallon;

(d) 33-1/3% when said average net sales price is 6c per gallon or more.

Note
Pages; 445- 449,
are on card 8.

Received Nov. 5, 11 15 AM '54 Federal Power Commission.

PETITION OF SHELL OIL COMPANY FOR DECLARATORY ORDER TO REMOVE UNCERTAINTY CONCERNING SALES OF CASINGHEAD GAS AT OR NEAR THE WELL ARISING FROM ISSUANCE OF ORDER NO. 174-A AND FOR DECLARATION OF STATUS.

United States of America.
Federal Power Commission.

In the Matter of:
Compliance by natural-gas producers and gatherers with certificate and rate requirements.
Docket No. G-4671, Docket No. R-138.

Order No. 174-A (Superseding Order No. 174).

OLIVER L. STONE,
GEORGE S. WOLBERT, JR.,
Attorneys for Petitioner, Shell Oil Company.

Shell Oil Company,
50 West 50th Street,
New York 20, N. Y.

Now comes Shell Oil Company ("Petitioner") and seeks this declaratory order pursuant to Section 1.7 (c) of the General Rules of Practice and Procedure of the Commission and Section 5(d) of the Adminis-

trative Procedure Act (5 U.S.C.A. 1004(d) [1] to remove the uncertainty, as herein set forth, arising from the issuance on August 6, 1954 by the Commission of Order No. 174-A ("Order"), and for declaration of status. In support of this petition, it is respectfully shown:

I.

Petitioner is a corporation incorporated under the laws of Delaware with its principal place of business at 50 West 50th Street, New York 20, N. Y., is authorized to do business in each of the 48 States, and is engaged in the business of exploring for, producing, refining and marketing petroleum and petroleum products. Petitioner is not engaged in the business of transporting natural gas in interstate commerce nor does Petitioner own or operate any facilities subject to the jurisdiction of the Commission under the Natural Gas Act.

II.

In the course of its exploration and production activities which are conducted in the principal oil and gas producing States, Petitioner has discovered large reserves of crude oil. In its native state in the reservoir there is in solution with and as a constituent part of this crude oil, certain gases composed primarily of the hydrocarbons of the paraffin series. This gas, upon being separated from the oil, is known

[1] Section 5(d) of the Administrative Procedure Act reads: "The agency is authorized in its discretion, with like effect as in the case of other orders to issue a declaratory order to terminate a controversy or remove uncertainty."

in the industry as "casinghead gas". Sometimes it is referred to as "oil well gas" or "crude oil vapor". It is impossible to produce the crude oil without also producing some of this casinghead gas along with it. In the process of producing the crude oil, these solution gases assist in moving the oil to the well bore and the oil and gas together flow to the surface of the well. Upon reaching the head of the well, the entire well effluent, which is at that point a mixture of crude oil, liquefiable hydrocarbons, gases and water, passes from the well through flow lines into an apparatus known as a "separator" which is located within the immediate vicinity of the well. In passing through the separator, the water, the crude oil, and some of the heavier liquid hydrocarbon fractions separate themselves from the mass as changes in pressure and temperature occur. The casinghead gas which emerges from the separator is still impregnated with liquid hydrocarbons and frequently contains varying amounts of hydrogen sulphide, water and impurities. In some instances it also contains carbon dioxide, nitrogen and helium. At this stage of the production process, that is, upon the casinghead gas leaving the separator, its disposition depends upon the circumstances in each field. In some cases it is used as fuel in the field; in some instances it is reinjected into the reservoir for pressure maintenance, or is used for gas-lifting of oil, in which case it is produced as casinghead gas currently with the oil. However, when a market is available, this casinghead gas is sold either at the wellhead or, as is almost universally the case, immediately as it leaves the separator.

III.

Delivery of the casinghead gas from the buyer to the seller is made at the outlet side of the separator and title passes at that point. All of Petitioner's casinghead gas sales are made to buyers with whom Petitioner has no corporate affiliation or connection (on some occasions Petitioner does sell its casinghead gas to itself and others as co-owners of a gasoline plant) and which buyers are not engaged in the interstate transmission of gas. On the contrary, all of these buyers own or operate plants for the manufacture of gasoline and other products from casinghead gas, and Petitioner sells its casinghead gas to these plant operators for that purpose.

IV.

Attached hereto as Exhibit "A" is a casinghead gas contract dated May 7, 1936, amendment thereof dated April 23, 1940, and supplement thereto dated October 1, 1952, under which Petitioner is selling casinghead gas to Phillips Petroleum Company (Phillips) in the McElroy Field, Crane and Upton Counties, Texas. Petitioner is the successor in interest to International Petroleum Corporation who executed the original contract as "Seller". It is this contract as to which Petitioner seeks a declaratory order and declaration of status. Under this contract, as supplemented, Petitioner is selling and delivering to Phillips at the outlet side of the separators, an average of approximately 500,000 cubic feet of casinghead gas per day. Title passes to Phillips at the separators. Upon delivery of this casinghead gas to Phillips, it is moved from the separators, through Phillips' own gathering

lines, along with other casinghead gas which Phillips purchases from other producers in the field, to Phillips' Crane Natural Gasoline Plant located in Crane County, Texas, where the manufacturing process takes place. After natural gasoline and other liquid hydrocarbons are manufactured from the casinghead gas, the resulting residue gas is put through a "treater" which "sweetens" the gas by removing hydrogen sulphide and impurities. This removed product, known as "acid gas", is sold by Phillips to its subsidiary, Phillips Chemical Company, which manufactures sulphur from the acid gas in its sulphur plant located near Phillips' gasoline plant. Petitioner is not a party to the sale of this acid gas.

V.

Petitioner is informed that the "sweet" residue gas (herein referred to as "surplus residue gas") which comes out of the "treater" is sold by Phillips to El Paso Natural Gas Company (El Paso) who takes title at the outlet side of the treater and transports it into other States where it is resold for ultimate public consumption.

VI.

Petitioner has the right, pursuant to the attached casinghead gas contract, to have returned to it for use on its leases, its proportionate share of the residue gas, but Petitioner is not presently taking any of such gas for that purpose.

VII.

At the time Phillips began taking casinghead gas pursuant to the attached contract, and for a number of years thereafter, and at the time Petitioner succeeded to the rights and obligations of the Seller under said contract, Phillips was not selling any part of the residue gas from its Crane plant, but all of this gas was being flared. Approximately two years ago, as the result of action by the Texas Railroad Commission threatening to shut down Phillips' Crane Natural Gasoline Plaintiff the flaring of this residue gas continued, Phillips entered into the contract referred to above under which it sells this residue gas to El Paso. Petitioner is not a party to this sale as Petitioner has no voice in determining to whom, if anyone, or at what price or under what conditions the surplus residue gas will be sold by Phillips.

VIII.

The attached contract, after specifying in the second "Whereas" paragraph that the Buyer contemplates the construction of, or has in operation, a gasoline plant in the vicinity of the property, then specifies the purpose for which the casinghead gas is being sold in these words:

"1.—Purpose—The gas hereby sold is conveyed to the Buyer for the purpose of manufacturing gasoline or such other product or products as may be manufactured at Buyer's plant."

It will be observed that, as is universally the custom in selling casinghead gas, the price is determined

by a formula which takes into account the liquid hydrocarbons recoverable or recovered from the casinghead gas, and the sulphur recovered from the acid gas, and the price for which these products are sold. Phillips does have the right "without the obligation" to sell any surplus residue gas, and if it does, Petitioner is entitled to receive an enhanced price for its casinghead gas based upon a given percentage of the net proceeds of such sale. But Petitioner has no voice whatsoever in determining whether the surplus residue gas or the acid gas will be sold, and if so, to whom or at what price.

IX.

The casinghead gas which Petitioner sells to Phillips has a hydrogen sulphide content of 35 hundred grains per 100 cubic feet. It has a gasoline content (G.P.M.—gallons per 1000 cubic feet) of 2.56 gallons per 1000 cubic feet. Based upon values for a recent month and gasoline and sulphur content calculated in accordance with the formulae in this contract, the value of the liquid hydrocarbons manufactured from this casinghead gas is 3.5 cents per m.c.f., whereas the residue value is only 1.7 cents per m.c.f. This means that for each 1000 cubic feet of casinghead gas which Petitioner sells to Phillips under this contract, Petitioner receives 3.5 cents for liquid hydrocarbons manufactured therefrom (plus 1 1/2 mills for sulphur) but only 1.7 cents based upon the surplus residue gas which Phillips sells to El Paso.

* * * * * * * *

Petitioner respectfully requests that the Commission issue a declaratory order declaring whether or not it is asserting jurisdiction over the sale of casing-

head gas made pursuant to the attached casinghead gas contract and also whether Order No. 174-A is intended to apply to such a sale of casinghead gas. Petitioner also respectfully requests the Commission to determine that, as to such casinghead gas sale, Petitioner's status be determined and that as to this sale, Petitioner be declared not to be a natural gas company within the provisions of the Natural Gas Act.

The Uncertainty Arising Under Order No. 174-A.

The Order, as well as Order No. 174 which it supersedes, was issued as a result of the decision of the United States Supreme Court in Phillips Petroleum Company v. Wisconsin et al., 347 U. S. 672. In Order 174 it was recited that the order was issued to promulgate reasonable rules applicable to "the class" of independent producers dealt with in the Phillips case. In the preamble to Order No. 174-A it is stated that Order No. 174, which prescribed regulations governing the filing of rate schedules and applications for certificates of public convenience and necessity "by persons engaged in the production and gathering of natural gas and held by the Supreme Court to be subject to all the requirements of the Natural Gas Act" in the Phillips case, should be revised in certain respects. Under Sections 154.92 and 157.23 of the Order, only those independent producers who, on or since June 7, 1954, have "engaged in the interstate transportation or sale of natural gas subject to the jurisdiction of the Commission" are required to file rate schedules and applications for certificates. Since, as the Commission well knows, the Supreme Court in the Phillips case held only that a company which sold natural gas after gathering and processing had been

completed was a natural-gas company under the Natural Gas Act, Petitioner is uncertain as to whether the Commission is asserting jurisdiction over sales of casinghead gas as described in this petition. And since the Order applies only to independent producers engaged in the sale of natural gas "subject to the jurisdiction of the Commission", Petitioner is uncertain as to whether the Commission intended the Order to apply to sales of casinghead gas of the type described herein because such sales have never been determined to be subject to the Commission's jurisdiction.

The Order defines "independent producer" as any person who is engaged in the production or gathering of natural gas and "who . . . sells natural gas in interstate commerce for resale . . ." The Order incorporates verbatim the language of the Natural Gas Act but it does not specify a standard by which one who sells gas can determine whether his sale is a sale in interstate commerce for resale.

* * * * * * * *

Petitioner contends that the sale of casinghead gas evidenced by the attached contract is not covered by the Natural Gas Act because it does not come within the jurisdictional requirements of that statute. To the extent that the Natural Gas Act deals with "sales", it applies only when several conditions coexist. These are:

(i) The sale must be "in interstate commerce";

(ii) The sale must be "of natural gas";

(iii) The sale must be "for resale for ultimate public consumption for domestic, commercial, industrial or any other use"; and

(iv) None of the exemptions of Section 1(b) of the Act must apply.

Petitioner contends that the Natural Gas Act does not apply to these sales of casinghead gas for each of the following reasons:

1. The sales are not "in interstate commerce";

2. They are not sales "for resale" but are sales for manufacturing;

3. The casinghead gas sold by the producer is not the same product (the surplus residue gas) which is later sold by the buyer-plant operator to an interstate gas transmission line after manufacturing intervenes;

4. The casinghead gas, at the point of delivery and passage of title at the wellhead or separator, is not "natural gas" as that product is defined in the Natural Gas Act;

5. The sales are within the "production or gathering" exemption of Section 1(b) of the Act.

A.

The Sale in Question is not a Sale in Interstate Commerce.

At the time and place of sale of the casinghead gas at the separator, the mass which is sold is not a product which is then suitable for public consumption. At that stage this product cannot be safely or economically transported in the large interstate natural gas pipe lines. In fact, it then has no practical value or utility as a product fit for public consumption. At that point the interstate journey has not commenced, and as far as the producer-seller is concerned or has knowledge, no resulting by-product of this mass, after undergoing a manufacturing process, may ever enter into an interstate journey. If any such by-product does enter into an interstate movement, this movement does not begin until after the casinghead gas undergoes a manufacturing process which materially alters its character, utility and value. Then and only then, can it be said that the interstate journey begins. The first incident of the interstate journey takes place when the surplus residue gas is delivered from the processing plant into the interstate transmission line. At that point, however, the producer-seller has no control over nor ownership in this surplus residue gas. It is this second sale (which was the type dealt with in the Phillips case) which is made by the plant operator (not the producer) which is the one and only one which is "the sale in interstate commerce" and it alone is covered by the Natural Gas Act. The first sale which takes place at the well or separator (the one with which we are here concerned) is in intrastate commerce and involves a raw product which is not then fit for interstate movement for resale for ultimate public consumption.

B.

The Sale is Not for Resale—It is for Manufacturing Purposes.

The Contract under consideration clearly evidences the agreement that the casinghead gas is sold for the purpose of manufacturing gasoline, sulphur and other products therefrom. The language used is:

"Purpose—The gas hereby sold is conveyed to the Buyer for the purpose of manufacturing gasoline or such other product or products as may be manufactured at Buyer's plant."

The contract provides that the buyer shall return to the seller for lease operations, certain portions of the residue gas remaining after the manufacture of gasoline and other products and after deduction of plant fuel. The surplus residue gas remaining after these events is sold by Phillips to an interstate gas transmission company which transports it into other States where it is resold for ultimate public consumption. Petitioner, as seller of the casinghead gas is not a party to the sale of the surplus residue gas for the obvious reason that it owns no part of it, although as additional compensation for the casinghead gas the Petitioner does receive a percentage of the proceeds of this sale. The sale of this surplus residue gas which is delivered after it flows from the processing plant is the first incident of the interstate sale for resale. However, Petitioner has no control over or voice in this sale and is not a party to it.

A decision that the casinghead gas sale under consideration constitutes a sale in interstate commerce "for resale" would do violence to the plainly written provisions of the contract and the obvious intention of the parties. The contract says that the gas is being sold "for the purpose of manufacturing gasoline or such other product or products as may be manufactured at Buyer's plant." It would be difficult to find language which could express more clearly the precise purpose for which the sale is made. The reason for so carefully stating the purpose of the sale is evident when we consider that it is the manufacturing process which will result in the extraction of the valuable liquid hydrocarbons, the market value of which will determine in a large measure the price which the producer-seller will receive for the casinghead gas.

The Natural Gas Act applies to the sale in interstate commerce of natural gas "for resale" for ultimate public consumption "but shall not apply to any other . . . sale . . ." Not being a sale "for resale", this sale comes within that class to which the statute itself says it shall not apply, hence it is not covered.

C.

The Casinghead Gas Which is Sold at the Separator is Not the Same Product (Surplus Residue Gas) Later Sold in Interstate Commerce—The Casinghead gas Itself is Not Suitable for Public Consumption at the Time of Sale.

As the casinghead gas leaves the separator—at which point title passes to the buyer—it is a mixture

of liquefiable hydrocarbons, gases, hydrogen sulphide, water, and impurities. In that condition, the casinghead gas has no utility or value for public consumption nor is it then a safe or economical product for shipment in the large interstate gas transmission lines which carry fuel gas to the consuming markets. In order to convert this product into gas which is fit for public consumption, it must undergo processing or manufacturing to extract the liquid hydrocarbons and to remove the hydrogen sulphide, water and impurities. In fact, the substance remaining after the extraction of natural gasoline is so "sour" (contains so much hydrogen sulphide) that it is treated for the extraction of "sour gas" from which sulphur is manufactured. . . . .

From the processing of the casinghead gas there emerges a by-product, residue gas, which is the only product which can be considered as natural gas fit for resale for ultimate public consumption. This product, however, is not the same as the product which the producer sells to the plant operator at the separator. This original sale does not embody the necessary jurisdictional element of conveying "natural gas for resale for ultimate public consumption" because the product sold is not then suitable for public consumption within the meaning of the Natural Gas Act —it is not the same product which Phillips later sells to El Paso.

D.

The Casinghead Gas Under Consideration is Not "Natural Gas" as That Term is Defined in the Natural Gas Act.

We have demonstrated, we believe, and the Commission no doubt knows of its own knowledge, that this substance called "casinghead gas", as it leaves the well or separator, is not composed solely of gaseous hydrocarbons. It does, of course, contain some gaseous hydrocarbons, but the mass of which it is a part is a mixture of gaseous hydrocarbons, liquefiable hydrocarbons, hydrogen sulphide, water and impurities. As is shown by the attached Supplement to Casinghead Gas Contract, it contains hydrogen sulphide in sufficient quantities to justify the manufacture of sulphur therefrom. Concededly, the residue gas resulting after casinghead gas undergoes processing and manufacturing is "natural gas" within the meaning of the statute, but such is not true of the casinghead gas at the point of sale and delivery. At that stage it is at most a raw material consisting of a mixture of natural gas, hydrogen sulphide and other substances, none of which is "artificial gas".

Section 2(5) of the Act defines natural gas thus:

" 'Natural gas' means either natural gas unmixed, or any mixture of natural and artificial gas."

The familiar rule of statutory construction "Inclusio unius est exclusio alterius" (the inclusion of one is the exclusion of the other) applies. The statute applies only to natural gas when it is transported or sold in two conditions, namely, (1) unmixed (which can mean only pure natural gas) and (2) mixed with artificial gas. When natural gas is sold in any other condition or state of mixture, the statute simply does not apply. The specification of artificial gas as the only substance which, when mixed with natural gas

makes the mixture subject to the statute, automatically excludes any mixture which does not include artificial gas. The casinghead gas in question is therefore not covered by the Act because it is neither "natural gas unmixed" nor a "mixture of natural and artificial gas".

E.

The Sale Under Consideration is Within the Production or Gathering Exemption of the Natural Gas Act.

If there is anything left to the production or gathering exemption contained in Section 1(b) of the Act—and Petitioner maintains there is—then the sale in question is so clearly within that exemption that there is no need to labor the point. This sale is in fact made as an incident to production and before gathering begins. At any rate, the sale is consummated at the very inception of the gathering process and before interstate transportation begins, and hence is clearly within an area in which the States are competent to act. Aside from the economic desirability of selling the casinghead gas, Petitioner is compelled to make some useful disposition of it as the State Regulatory bodies prohibit its being flared. And the States would clearly be constitutionally competent, in the interest of conservation, to establish the price at which this casinghead gas could be sold at the well or separator under Cities Service Gas Co. v. Peerless Oil and Gas Company, (1950) 340 U.S. 179, and Phillips Petroleum Company v. Oklahoma, (1950) 340 U.S. 190.

On August 25, 1954, Petitioner filed with the Commission a petition for rehearing on Order No. 174-A. On September 22, 1954, the Commission heard arguments on the numerous petitions for rehearing which were filed, but no pronouncement clarifying the extent to which the Commission is asserting jurisdiction has yet been issued as a result of that hearing. Perhaps the uncertainty which Petitioner finds to exist as a result of the Order will be eliminated by an amendatory order from the Commission.

In the absence of such action, and subject to its application for rehearing on the Order, and with full reservation of all rights and remedies which are available to it, Petitioner seeks this declaratory order and declaration of status.

We are not unmindful of the tremendous administrative burden which has been thrust upon the Commission as a result of the decision of the Supreme Court in the Phillips case. But because of the important role which the wellhead sale of casinghead gas plays in the oil production business and the pressing need for an early and definite pronouncement of the Commission's jurisdictional position with respect to the sale of this product under circumstances described in this petition, it is respectfully urged that the Commission exercise its discretion and grant the order herein requested and that this application be given as much priority as the affairs of the Commission will permit.

Wherefore, Petitioner respectfully requests that the Commission issue a declaratory order declaring that the casinghead gas sale described in this petition and

attached hereto as Exhibit "A" is not subject to the Natural Gas Act; that the Commission is not asserting jurisdiction over such sale, and that Order No. 174-A is not intended to cover it; and that with respect to said sale Petitioner is not a natural-gas company under the Natural Gas Act.

Respectfully submitted,
OLIVER L. STONE,
GEORGE S. WOLBERT, JR.,
By OLIVER L. STONE,
(Oliver L. Stone),
Attorneys for Shell Oil Company.

50 West 50th Street,
New York 20, New York.

November 3, 1954.

Washington,
District of Columbia. ss.

Before me, the undersigned authority, on this day appeared Oliver L. Stone, who, being by me first duly sworn, on his oath says:

That he is attorney for Shell Oil Company and is authorized to make this affidavit; that the facts alleged in the foregoing petition are true and correct to the best of his information and belief.

OLIVER L. STONE,
(Oliver L. Stone).

Subscribed and sworn to before me this 3rd day of November, 1954.

(S.) MARY V. JUDGE,
Notary Public.

Note

Pages 468 - 471 are on card 8

Amendment to Casinghead Gas Contract.

#17 McCanny.

Know All Men By These Presents:

That the undersigned person and/or corporation, designated as Sellers, are the owners of a valid and subsisting oil and gas lease and a leasehold estate in and upon the following described lands in Crane and Upton County, Texas, to wit:

S/2 N/2 and N/2 S/2 of Section 206, Block F, CCSD & RGNG Ry. Survey,

and said undersigned Sellers, or their predecessors in interest, have heretofore entered into a certain casinghead gas contract (and supplements thereto, if any) with the undersigned, Phillips Petroleum Company, hereinafter referred to as Buyer, or its predecessor in interest, covering said lands and providing for payment for casinghead gas purchased under said casinghead gas contract upon the basis of a price schedule set forth in said casinghead gas contract, or supplement thereto. Said casinghead gas contract (and supplements thereto, if any) are now owned by the undersigned, Phillips Petroleum Company.

For and in consideration of the mutual benefits to the parties hereto, it is hereby agreed that, effective August 1, 1939, said casinghead gas contract (and supplements thereto, if any) shall be modified and amended to include the following provision, to wit:

"In the event Buyer shall manufacture or extract from the gas purchased under said casinghead gas

contract (and supplements thereto, if any) any product or products other than, and in addition to, residue gas and 26-70 gasoline (as defined by Natural Gasoline Association of America January 1, 1938) andor its normal constituents or components in their normal proportions in such gasoline when extracted from said gas, and shall market such additional product or products or use it or them for any purpose other than for plant fuel or in the residue gas, Buyer shall pay to Seler a further five per cent (5%) additional to the various percentages set out in the price schedule now applicable under said casinghead gas contract, or supplement thereto. It is understood, however, that Buyer shall have the right, free of such additional consideration, to manufacture or extract from the gas 26 70 gasoline and/or any and all of its normal constituents or components in their normal proportions in such gasoline when extracted from said gas and to refine or reprocess the same in any manner or into any other products."

The terms, covenants and provisions hereof shall extend to and be binding upon the parties hereto, their assigns and successors in interest.

Executed this 23rd day of April, 1940.

SHELL OIL COMPANY, INCORPORATED,

By (Illegible),
Attorney-in-Fact,
Seller.

PHILLIPS PETROLEUM COMPANY,

By F. E. RICE,
Vice President.

Attest:
(Illegible),
Assistant Secretary.

The State of Texas,
County of Harris.

Before me, the undersigned authority, on this day personally appeared (Illegible), known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged me to that he executed the same as the act and deed of Shell Oil Company Incorporated, a corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this 23 day of April, A.D. 1940.

GEO. R. WOOLF,
Notary Public in and for the County of Harris, State of Texas.

(Seal)

The State of Oklahoma,
County of Washington.

Before me, the undersigned authority, on this day personally appeared F. E. Rice, Vice President, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of Phillips Ptroleum Company, a corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this 14 day of May, A. D. 1940.

LOTTA M. MILLER,
Notary Public in and for the State of Oklahoma.

(Seal)

My Commission expires Oct. 10, 1954.

Supplement to Casinghead Gas Contract.

#17 Crane

This Supplement Agreement, Made and entered into this 1 day of October, 1952, by and between the undersigned persons designated and referred to herein as "Seller," whether one or more, and the undersigned Phillips Petroleum Company, referred to herein as "Phillips,"

Witnesseth:

1. This agreement supplements that certain Casinghead Gas Contract dated May 7, 1936, between the undersigned Seller or his predecessor, as Seller, and Phillips or its predecessor, as Buyer, covering the following dscribed lands in Crane & Upton Counties, Texas, to-wit:

S/2 N/2 and N/2 S/2 Section 206, Block F, CCSD & RGNG Ry. Survey.

2. It is understood that the casinghead gas purchased under said Casinghead Gas Contract is processed by Phillips in its Crane Natural Gasoline Plant and that, in connection with and adjacent to said Na-

tural Gasoline Plant, Phillips operates a treater in which it sweetens a part of the residue gas from said Natural Gasoline Plant by removing therefrom "acid gas" consisting of hydrogen sulphide and impurities, and that Phillips is now selling such acid gas to its subsidiary, Phillips Chemical Company, which extracts the hydrogen sulphide from the acid gas and manufactures sulphur therefrom in its sulphur plant located near Phillips' said Crane Natural Gasoline Plant.

3. As additional consideration for the casinghead gas purchased by Phillips under the terms of said Casinghead Gas Contract, and all component parts thereof, and in lieu of any other payments in respect of acid gas removed from such casinghead gas in said treater, Phillips agrees to pay to Seller each month the value (determined as provided in Section 4 hereof) of the total volume (determined as provided in Section 5 hereof) of hydrogen sulphide content of the acid gas removed by Phillips from such casinghead gas and sold by Phillips to Phillips Chemical Company during such month.

4. The value per Mcf of such hydrogen sulphide content shall be as indicated in the following Price Table, based upon the published price of sulphur for the applicable accounting period:

Price Table

Quoted Price of Sulphur $/Long Ton	Value of Hydrogen Sulphide in $/Mcf
12	0.0155
14	0.0311
16	0.0466
18	0.0621
20	0.0776
22	0.0932
23	0.1009
24	0.1086
26	0.1242
28	0.1397
30	0.1553

The term "Quoted Price of Sulphur per Long Ton" as used in the foregoing Price Table shall mean the arithmetic average during the applicable accounting period of all quotations (high and low) for crude sulphur per long ton f.o.b. cars Gulf Coast mines published in the weekly issue of the Oil, Paint and Drug Reporter during such period. In the event said publication shall cease to issue or shall cease to publish such quotations, such other publication or publications shall be used as then shall be recognized as authoritative by the United States Chemical Industry.

5. The total volume of hydrogen sulphide content of the acid gas removed by Phillips in said treater from the casinghead gas purchased under said Casinghead Gas Contract and sold by Phillips to Phillips Chemical Company during each month, shall be determined as follows:

(a) At each meter station through which gas processed in said Natural Gasoline Plant is measured, tests to determine the percentage of hydrogen sulphide content of the gas at such meter station shall be made by the Tutweiler Method* annually or as much oftener as may be required by changing conditions (as, for instance, by the completion or abandonment of a well from which gas is measured at such meter station). The first such tests shall apply from beginning of the sulphur manufacturing operations hereinabove described until the effective date of the next following tests. After the first such tests, each test shall be applicable as of the first of the calendar month following the taking of such test and shall continue to be applicable until the effective date of the next folowing test. Phillips shall give Seller at least ten days' written notice of the taking of each such test of gas deivered under said Casinghead Gas Contract and Seller may witness the test or make joint tests with its own appliances. Upon written request from Seller to Phillips, Seller shall also be entitled to have a representative present to witness the taking of all other tests herein provided for.

(b) The volume of hydrogen sulphide contained in all acid gas removed at said treater during each monthly accounting period and delivered by Phillips to Phillips Chemical Company shall be determined by tests of such acid gas made at weekly intervals by methods accepted in the industry for the testing of such gas, each such test to apply until the following test is made.

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* American Gas Chemists Handbook, Chemical Publishing Company, Third Edition 1929, page 462.

(c) In respect of casinghead gas delivered under said Casinghead Gas Contract, the term "gas available for sale" shall mean that volume of gas which Seller is entitled to have returned for lease operations, under the terms of Section 5, Residue Gas, of said Casinghead Gas Contract, less the volume of gas actually returned for that purpose. In respect of all other gas delivered by other sellers or producers from other points and processed in Phillips' Crane Natural Gasoline Plant, the term "gas available for sale" shall have a like meaning and be determined in a like manner.

(d) The volume of hydrogen sulphide contained in the gas available for sale from casinghead gas delivered under said Casinghead Gas Contract during each monthly accounting period shall be deemed to be the volume of such gas available for sale during such period multiplied by the percentage of hydrogen sulphide content of the gas delivered under said contract during said period. The volume of hydrogen sulphide contained in the gas available for sale from all gas delivered through all meter stations and processed in said Natural Gasoline Plant during such accounting period shall be determined in like manner, using the tests for hydrogen sulphide content made at the various meter stations as provided above.

(e) The total volume of hydrogen sulphide content of acid gas removed by Phillips in said treater from casinghead gas purchased under said Casinghead Gas Contract and sold by Phillips & Phillips Chemical Company during each month shall be deemed to be that proportionate part of the total volume of hydrogen sulphide content of all acid gas removed in said

treater and delivered by Phillips to Phillips Chemical Company during such month which the volume of hydrogen sulphide content of the gas available for sale from all casinghead gas delivered under said Casinghead Gas Contract during such month bears to the total volume of hydrogen sulphide content of all gas available for sale from all gas delivered through all meter stations and processed in said Natural Gasoline Plant, determined as above provided.

6. All measurements and tests of gas shall be made at the pressure and temperature and under all applicable conditions specified in said Casinghead Gas Contract.

As herein supplemented, said Casinghead Gas Contract shall be and remain in full force and effect in accordance with its terms.

In Witness Whereof, the parties have hereunto subscribed their names.

SHELL OIL COMPANY,
By (Illegible),
Vice-President.
.....
.....
.....
Seller.

Attest:
PAXTON HOWARD,
Assistant Secretary.
.....
.....
.....
(Seal)

(Seal)

PHILLIPS PETROLEUM COMPANY,
By (Illegible),
Vice-President,
Buyer.

Attest:
.....

Assistant Secretary,

(Seal).

* * * * * * * *

That thereafter the following proceedings were had in said cause in the United States Court of Appeals for the Fifth Circuit, viz:-

(P. 482)

ORDER TO FILE PETITION FOR REVIEW FILED:- December 19, 1955.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 15884

HUMBLE OIL & REFINING COMPANY,

Petitioner

versus

FEDERAL POWER COMMISSION,

Respondent.

A petition for review of an order of the Federal Power Commission issued on September 9, 1955, in Docket No. G-5261, having been presented to this Court;

IT IS ORDERED that said petition be filed and docketed as of December 19, 1955;

IT IS ORDERED that said petition be filed and docketed as of December 19, 1955;

And it is further ordered that a copy of this Order and said petition be forthwith served upon the Federal Power Commission, and that said Federal Power Commission, upon service of such copies, forthwith certify and file in this Court, a transcript of the record in the proceedings in conformity to Rule 38, as amended, of this Court.

/s/ JOHN A. FERHAN, JR.
Clerk of the United States Court
of Appeals for the Fifth Circuit

New Orleans, Louisiana
December 19, 1955.

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 384

HUMBLE OIL & REFINING COMPANY,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

PETITION FOR REVIEW OF ORDER OF THE FEDERAL POWER COMMISSION

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DEC 1 [illegible]

BORG PRINTING COMPANY OF TEXAS, HOUSTON, TEXAS

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IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

NO.....

HUMBLE OIL & REFINING COMPANY,

Petitioner,

v.

FEDERAL POWER COMMISSION,

Respondent.

PETITION FOR REVIEW OF ORDER OF THE FEDERAL POWER COMMISSION

To the Honorable, the United States Court of Appeals for the Fifth Circuit:

I.

NATURE OF PROCEEDINGS

Comes now Humble Oil & Refining Company (Petitioner) and files this, its petition for review of the "Opinion and Order Affirming Examiner's Decision," issued by the Federal Power Commission (Commission) on September 9, 1955, *In the Matter of Deep South Oil Company of Texas, Shell Oil Company,* and *Humble Oil & Refining Company,* Docket Nos. G-2952, G-4671 and G-5261, respectively. By said opinion and order, designated by the Commission and hereinafter referred to as "Opinion No. 284," the Commission determined that certain sales by Petitioner of casinghead gas are subject to regulation under the Natural Gas

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p Stock and for Sale by
The Olds Press,
Tulsa Okla.

Casinghead Gas Contract

Standard Form Revised — Adopted by Natural Gasoline Association of America, November 7, 1932

This Agreement, Made and entered into this 7th day of January, 19 41 by and between Humble Oil & Refining Company hereinafter referred to as the "Seller" and Shell Oil Company, Incorporated hereinafter referred to as the "Buyer".

WITNESSETH: WHEREAS, Seller owns and holds a certain valid and subsisting oil and gas mining lease covering the following described lands situate and being within the County of Yoakum, State of Texas, to-wit:

Bennett Lease:

N½ & SE¼ of Section 738, Block D,
John H. Gibson Survey,

and,

WHEREAS, Seller is operating the above described properties and certain wells on said lands are productive, or may be productive, in addition to oil, of what is termed casinghead gas, (it being understood that the term "casinghead gas" means the gas issuing from oil wells whether produced from the same sand or strata from which the oil is produced or by the induction of gas with compressors or other means for flowing the oil), and the Seller desires to sell the casinghead gas which may hereafter be produced from oil wells located on said premises; and,

WHEREAS, Buyer contemplates the construction of, or has in operation, a gasoline plant in the vicinity of said property and desires to buy said casinghead gas;

NOW, THEREFORE, in consideration of the sum of One ($1.00) Dollar paid by the Buyer to the Seller, receipt of which is hereby acknowledged, and other payments and covenants hereinafter specified, the Seller hereby grants, bargains, sells and agrees to deliver to the Buyer and the Buyer agrees to purchase and take from the Seller, subject to the stipulations and conditions hereinafter specified, all the casinghead gas now or hereafter produced from the wells on the lands hereinabove described, or hereafter drilled thereon.

1—PURPOSE—The gas hereby sold is conveyed to the Buyer for the purpose of manufacturing therefrom gasoline or such other product or products as may be manufactured at Buyer's plant.

2—DELIVERY PLACE—The delivery of the casinghead gas shall be made at vapor tight flow tanks and/or gas traps furnished by Seller and/or at the casingheads of the wells. Buyer may, with Seller's consent, install equipment acceptable to Seller on Seller's storage tanks for the purpose of saving and utilizing vapors therefrom, which vapors for the purpose of this contract shall be considered casinghead gas.

3—DELIVERY DATE—The delivery and reception of said gas shall begin on or before April 30, 1941, and failure to accept and/or agree to pay for said gas by said date shall give the Seller the right to cancel this contract any time thereafter before actual utilization begins by serving ten (10) days' written notice on Buyer.

4—LEAN AND FLUSH GAS—The Buyer agrees to take all the gas testing more than three-fourths gallons of gasoline per thousand cubic feet of gas; provided that during flush casinghead gas production from the property covered hereby the Buyer shall only be obligated to take ratably as to quantity with all other flush production connected to its plant. Seller shall have the right to dispose of any gas not taken or paid for by the Buyer; provided that Buyer shall have the right to take any or all of such gas at any time thereafter conditioned upon Buyer giving Seller at least thirty days' notice of its election to so do.

5—RESIDUE GAS—The Buyer shall return to the nearest boundary line of the Seller's lease, above described, sufficient residue gas for the development and operation of said lease, the amount of such gas not to exceed that remaining from the quantity of casinghead gas delivered to the Buyer from said lease after the extraction of gasoline therefrom, less the proportionate part of said residue gas necessary for gasoline plant operation, both determined by the residue gas curve attached hereto; provided that in the event residue gas to be returned hereunder by the Buyer shall be insufficient in quantity for the purpose of developing and operating said lease, the Seller hereby reserves the right to use casinghead gas from its lease sufficient in quantity to make up the deficiency. Utilization of said residue gas so returned by the Buyer shall be at the Seller's risk. In the event Seller accepts and uses dry gas, furnished by Buyer, in excess of the amount of residue gas to which Seller is entitled, Seller shall pay Buyer for such dry gas at delivered cost to Buyer.

It is agreed and understood by and between the parties hereto, that if and when the residue gas remaining after the extraction of gasoline from such casinghead gas shall be more than sufficient for the needs of Buyer in the operation of said gasoline plant and more than sufficient for the needs and requirements of Seller for the development and operating purposes upon the premises from which the said casinghead gas is produced, then, and in that event, the Buyer shall have the right to sell any or all surplus residue gas so remaining; provided that in the event of sale by the Buyer of any or all of such residue gas, Buyer shall pay to the Seller herein fifty per cent of the net proceeds received from the sale of such gas, such payments to be made at the same time as other payments hereunder. Net proceeds as herein used is defined as the gross proceeds less any cost of boosting and/or transportation necessary to market such gas. It is further agreed and understood that as a basis of settlement hereunder for the sale of residue gas, it shall be determined how much residue gas the Seller was entitled to have returned and the volume that actually was returned during the month for which settlement is to be made, and the difference shall be regarded as the volume of surplus residue gas available for sale from the casinghead gas delivered hereunder. The volume of surplus residue gas sold from the casinghead gas delivered hereunder shall be determined by the proportion which the volume of surplus residue gas available for sale from said delivery bears to the total volume of surplus residue gas available for sale from all casinghead gas delivered to said plant.

6—DILUTED GAS—The Seller hereby specifically reserves the right to introduce air, gas, or any other extraneous substance into the well or wells covered hereby or into the sand or sands from which said well or wells are producing when in the exclusive judgment of the Seller the introduction of such substances is desirable in the operation of such well or wells for the production of oil even though such well or wells may be entirely destroyed as a producer or producers of casinghead gas; provided that should the Seller's operations under this paragraph create a condition which in the exclusive judgment of the Buyer makes the taking and utilization of casinghead gas therefrom unprofitable to the Buyer, or should such operations tend to endanger the plant or property of Buyer or the lives of Buyer's employees should such diluted or contaminated gas be taken, then Buyer, at its election, may discontinue taking the casinghead gas from the particular well or wells while being so operated.

7—RIGHT OF WAY—In so far as Seller's lease permits, Buyer is granted the right to lay and maintain lines and to install any necessary equipment on said lease and shall have the right to free entry for any purpose incidental to gasoline plant operations so long as such purpose does not interfere with lease operations or the rights of owners in fee. All line and other equipment placed by Buyer on said lands shall remain the property of the Buyer and, subject to the terms of this contract, may be removed by Buyer at any time.

8—SETTLEMENT TESTS—The gasoline content shall be determined by a field compression test made in accordance with the official code of the Natural Gasoline Association of America for testing natural gas for gasoline content. The specific gravity shall be determined in accordance with the specifications and test procedure of said association for the determination of specific gravity of natural gases by the balance method. The tests for gasoline content, air content and specific gravity of the gas shall be made by the Buyer quarterly except when, in the opinion of either party, a change in the method of operations of the lease will affect materially the gasoline content and specific gravity of the gas, in which event the tests shall be made at the demand of either party upon five (5) days' notice to the other party. The Buyer shall notify the Seller in writing ten (10) days previous to the quarterly tests in order that it may have a representative present to witness said tests or charcoal adsorption - Seller's option

and/or make joint tests with its own appliances. The content tests shall be computed on the basis of four (4) ounces above an assumed atmospheric pressure of 13.2 pounds per square inch absolute and at a base temperature of sixty (60) degrees Fahrenheit.

9—METERS—The casinghead gas delivered hereunder shall be measured by a suitable orifice meter, or meters, of standard make to be furnished, installed and kept in repair by Buyer on the lease herein covered. The amount of gas so metered shall be computed on the basis of four (4) ounces above an assumed atmospheric pressure of 13.2 pounds per square inch absolute at a base temperature of sixty (60) degrees Fahrenheit and at an assumed flowing temperature of 600 degrees Fahrenheit. The Buyer shall test, and if necessary adjust and repair, said meter, or meters, at or about the time the tests for gasoline contents are made. Said meter, or meters, shall be open to inspection at all times by Seller in the presence of Buyer. In case any question arises as to the accuracy of the meter measurement said meter, or meters, shall be tested upon the demand of either party. The expense of such tests shall be borne by the party demanding same if the meter is found to be correct and by the Buyer if found incorrect. A registration within 3% of correct shall be considered correct. Settlement for any period of inoperation or inaccurate measurement shall be in accordance with the average readings taken during the last preceding ten days when the meter was registering accurately and the first ten days after the meter was restored to accuracy. If requested Buyer shall send the charts to Seller for checking after which they are to be returned to Buyer.

10—PRICE—The Buyer shall pay to Seller for the casinghead gas delivered hereunder a price per thousand cubic feet to be computed on the following basis:

1. When gasoline content is less than .75 gallons per thousand cubic feet:
   (a) When average price is 2c per gallon, or less, 5% of the value of the gasoline.
   (b) When average price is more than 2c, but less than 4c per gallon, 10% of the value of the gasoline.
   (c) When average price is 4c, but less than 6c per gallon, 15% of the value of the gasoline.
   (d) When the average price is 6c per gallon, or more, 20% of the value of the gasoline.
2. When gasoline content is .75 gallons per thousand cubic feet, but less than 1.75 gallons per thousand cubic feet
   (a) When average price is 2c per gallon, or less, 10% of the value of the gasoline.
   (b) When average price is more than 2c, but less than 4c per gallon, 15% of the value of the gasoline.
   (c) When average price is 4c, but less than 6c per gallon, 20% of the value of the gasoline.
   (d) When the average price is 6c per gallon, or more, 25% of the value of the gasoline.
3. When gasoline content is 1.75 gallons per thousand cubic feet, or above:
   (a) When average price is 2c per gallon, or less, 15% of the value of the gasoline.
   (b) When average price is more than 2c, but less than 4c per gallon, 20% of the value of the gasoline.
   (c) When average price is 4c, but less than 6c per gallon, 25% of the value of the gasoline.
   (d) When the average price is 6c per gallon, or more, 33 1/3% of the value of the gasoline.

The value of the gasoline contained in a thousand cubic feet of gas shall be determined by multiplying the gasoline content (determined as hereinabove provided) by the average sales price of grade 26-70 natural gasoline, or its substantial equivalent, as quoted in the National Petroleum News for North Texas (f.o.b. Breckenridge) during settlement period.

11—PAYMENT—Payment shall be made by the Buyer not later than the 20th day of each month for all casinghead gas purchased hereunder during the preceding month, and at the time payment is made a statement showing full details of the accounts shall be transmitted to the Seller accompanying the Buyer's check in payment therefor. Examination by the Seller of the books of account kept by the Buyer respecting said gas account shall be permitted by the Buyer at any and all reasonable hours.

12—TITLE—The Seller warrants its title to said gas and that it has good right to sell said gas to Buyer but the Buyer shall not be required to make payments until the Seller shall have submitted abstracts of title covering said leasehold showing good and merchantable title in it and that it has good right to sell said casinghead gas, all to the satisfaction of the attorneys of the Buyer; provided however if the title of Seller is questioned, or involved in any action, the Buyer shall have the right to withhold payment during the pendency of such action or until said title is freed from such question, or until Seller furnishes bond conditioned to save Buyer harmless with surety acceptable to the Buyer.

13—ROYALTY—The Seller agrees to account and pay to the lessors or royalty owners in the lease above described, in strict accordance with the provisions thereof, the royalty on the casinghead gas sold and delivered hereunder to Buyer.

14—VACUUM—Upon request of Seller the Buyer shall apply and maintain on Seller's wells a vacuum substantially equal to that maintained on offset wells by gasoline plants. Up to such maximum Seller shall have control of said vacuum at all times

15—DRIP—The Buyer shall keep reasonably clear of obstruction all its pipe lines through which said gas is being delivered and shall own all liquid collected in such lines.

16—CASUALTY—Any failure of either party hereto to perform any of the obligations hereunder shall be excused if such failure is due to fires, strikes, floods, lack of water, winds, lightning, accidents or any circumstances beyond the control of the party failing to perform.

17—UNPROFITABLE GAS—In the event the casinghead gas from any well or wells on said lease becomes insufficient in volume or gasoline content, or for any cause becomes unprofitable for the extraction of gasoline therefrom, the Buyer shall have the right to cease taking the gas so long as such condition exists. It is further provided that if at any time the volume and/or gasoline content of the gas available to Buyer, or if any cause beyond its control, shall render the construction and/or operation of said plant unprofitable, Buyer may, by thirty days' written notice and payment, or tender, to Seller of Ten ($10.00) Dollars, cancel this contract.

18—PRIORITY RIGHTS OF SELLER—As said premises are being operated primarily for the production of oil, the taking of casinghead gas by the Buyer shall be subservient to said oil operations. The Seller may, at any time, without liability to Buyer clean out, deepen or abandon any well or wells on the above described properties, or may use any efficient, modern or improved method for the production of oil. Before any well or wells are taken out of service for any reason whatsoever Seller agrees to first shut off the same from communication with the gathering mains.

19—INDEMNITY—The Buyer shall indemnify and hold the Seller harmless against any claims for damages growing out of the operations conducted hereunder by the Buyer. Likewise the Seller shall indemnify and hold the Buyer harmless against any claims for damages growing out of Seller's operations of the lease herein described.

20—SCOPE—In the event the property above described covers more than one lease, this contract shall be construed as a separate contract on each lease.

21—REGULATORY BODIES—This contract shall be subject to all the rules and regulations of any duly constituted federal or state regulatory body having jurisdiction herein.

22—ARBITRATION—In the event of any dispute or controversy between the parties hereto involving the operations under this contract same shall be settled by arbitration. Each of the parties shall appoint an arbitrator and the two appointed shall select a third. The award of any two arbitrators shall be conclusive upon the parties and shall be made within thirty days after the appointment of the first arbitrator.

23—TERM—Either party shall have the right to terminate this contract at the expiration of Five (5) years from the date thereof or on any anniversary of said date thereafter by giving the other party thirty (30) days' notice, in writing, of its intention so to do, after which each party shall be released from all further liability hereunder; provided that in the event the oil and gas lease covering said premises should terminate before the expiration of the term of this contract then this contract shall be cancelled contemporaneously with such termination.

24—ASSIGNMENT—This contract shall extend to and be binding upon the parties hereto, their heirs, administrators, successors and assigns, but no transfer of or succession to the interest of the Seller hereunder, wholly or partially, shall affect or bind the Buyer until it shall have been furnished at the office of the Buyer in the city of Houston, Texas, with the original instrument or with proper proof that the claimant is legally entitled to such interest.

25 – **BUTANE**—It is agreed that in the event Buyer manufactures excess butane, as hereinafter defined, from the casinghead gas delivered to Buyer hereunder, Seller shall receive additional payment for said casinghead gas in accordance with the following:

If butane is manufactured as a separate product, in addition to natural gasoline, at said plant, and/or there is manufactured at said plant a natural gasoline having a Reid vapor pressure in excess of 26 pounds, then in any such event, all butane manufactured and saved in excess of the amount of butane which would have been a normal constituent of 26 pound Reid vapor pressure natural gasoline, if all the natural gasoline manufactured at the plant had been 26 pound material, shall be considered excess butane hereunder.

The following illustrates the method to be used in determining the total quantity of excess butane manufactured and saved at the plant:

(1) During any period of time that all of the natural gasoline manufactured at said plant has a Reid vapor pressure of 26 pounds, then all of the butane manufactured and saved as a separate product during such period shall be considered as excess butane.

(2) During any period of time that the natural gasoline manufactured at said plant has a Reid vapor pressure of less than 26 pounds, then the calculated quantity of butane which would be necessary to raise the vapor pressure of such natural gasoline to 26 pounds shall be deducted from the total quantity of butane manufactured and saved as a separate product during such period, and the resulting quantity shall be considered as excess butane.

(3) During any period of time that the natural gasoline manufactured at said plant has a Reid vapor pressure of more than 26 pounds, then all of the butane manufactured and saved as a separate product during such period shall be considered as excess butane; and further the amount of excess butane contained in such natural gasoline having a Reid vapor pressure of more than 26 pounds shall be computed by deducting from the total of such finished product that calculated portion of the finished product that is convertible to 26 pound material, and the resulting quantity shall be considered as excess butane.

Buyer shall pay to Seller, in addition to the amounts payable under Article 10 hereof, the amount hereinafter specified for that portion of such excess butane attributable to the casinghead gas purchased from the above described lease. Inasmuch as Buyer is also purchasing casinghead gas from others for processing in said plant, it is agreed that in determining the portion of the total quantity of excess butane, as above defined, for which Seller is entitled to payment, there shall be used as a multiplier of the total amount of excess butane manufactured and saved at said plant during each month, as above determined, a fraction whose numerator shall equal the number of gallons of gasoline contained in the casinghead gas delivered by Seller hereunder during such month, ascertained by field tests, as provided in Article 8 hereof, and whose denominator shall equal the total number of gallons of gasoline contained in all of the casinghead gas, ascertained in the same manner, processed in said plant during the same month.

Buyer shall pay to Seller for such portion of the total excess butane, for which Seller is entitled to payment, as above provided, twelve per cent (12%) of the following applicable price:

(a) ¾c per gallon for such portion of the excess butane manufactured and saved at said plant and removed therefrom during the months of April, May, June, July, August, and September.

(b) 1¼c per gallon for such portion of the excess butane manufactured and saved at said plant and removed therefrom during the months of October, November, December, January, February, and March.

It is agreed that in the event the Natural Gasoline Association of America hereafter adopts an amendment to the standard form of casinghead gas contract dated November 7, 1932, providing for settlements for excess butane, as hereinabove defined, at variance with the percentage of payment above set forth, such amendment shall be substituted for settlement purposes hereunder, effective as to excess butane manufactured from and after the end of the settlement period existing at the time the amendment is formally adopted by the Natural Gasoline Association of America.

IN WITNESS WHEREOF the parties have ... unto subscribed their names.

APPROVED

Form

ATTEST:

Assistant Secretary

HUMBLE OIL & REFINING COMPANY

By

Vice President

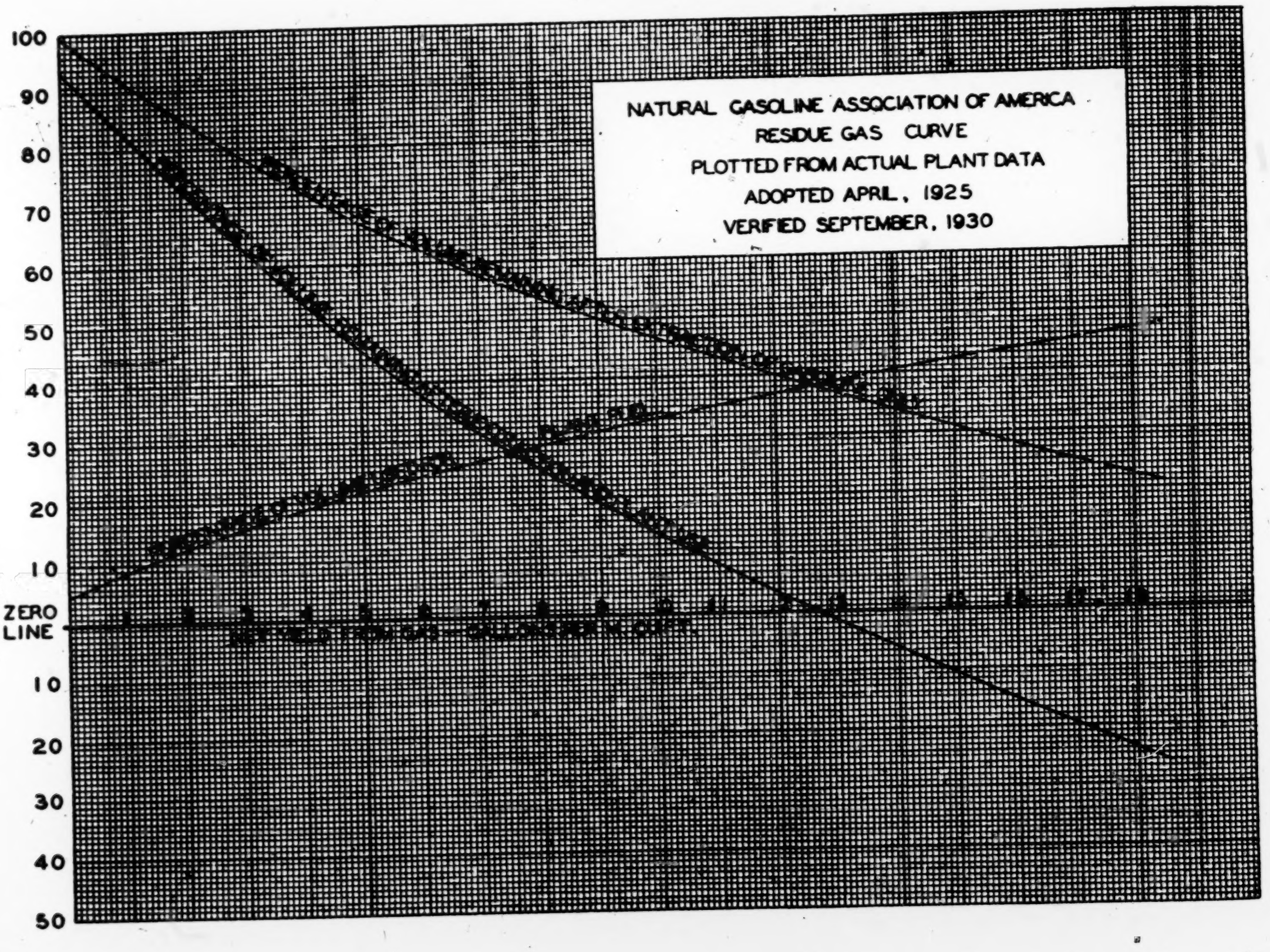
Seller.

SHELL OIL COMPANY, Incorporated

By

Attorney-in-Fact

Buyer.



N.G.A.A. Standard Table, adopted February 9, 1932, showing the per cent of casinghead gas returnable as residue after extraction and plant use as shown by Natural Gasoline Association of America residue gas curve.

G.P.M.	%RET.	G.P.M.	%RET.	G.P.M.	%RET.	G.P.M.	%RET.	G.P.M.	%RET.	G.P.M.	%RET.	G.P.M.	%RET.	G.P.M.	%RET.	G.P.M.	%RET.
.00	0	2.00	72.90	4.00	54.30	6.00	38.30	8.00	25.10	10.00	13.70	12 00	3.50	14.00	-6.20	16.00	-15.30
.05	93.10	2.05	72.45	4.05	53.85	6.05	37.90	8.05	24 80	10.05	13 35	12.05	3.25	14.05	-6.40	16.05	-15.55
.10	92.60	2.10	72.00	4.10	53.40	6.10	37.50	8.10	24.50	10.10	13.00	12.10	3.00	14.10	-6.60	16.10	-15.80
.15	92.10	2.15	71.50	4.15	52 95	6.15	37 20	8.15	24.25	10.15	12.75	12.15	2.75	14.15	-6.80	16.15	-16.05
.20	91.60	2.20	71.00	4.20	52.50	6.20	36.90	8.20	24.00	10.20	12 50	12.20	2.50	14.20	-7.00	16.20	-16.30
.25	91.05	2.25	70.50	4.25	52.15	6.25	36.55	8.25	23.65	10.25	12.25	12.25	2.30	14.25	-7.30	16.25	-16.55
.30	90.50	2.30	70.10	4.30	51.80	6 30	36.20	8.30	23.30	10.30	12.00	12.30	2.10	14.30	-7.60	16.30	-16.80
.35	90.05	2.35	69.60	4.35	51.30	6.35	35.80	8.35	22.95	10.35	11.75	12.35	1.85	14.35	-7 85	16.35	-17.00
.40	89.60	2.40	69.10	4.40	50.80	6.40	35.40	8.40	22.60	10.40	11.50	12.40	1.60	14.40	-8.10	16.40	-17.20
.45	89.00	2.45	68.65	4.45	50.40	6.45	35.10	8.45	22.30	10.45	11.25	12.45	1.40	14.45	-8.35	16.45	-17.30
.50	88.40	2.50	68.20	4 50	50.00	6.50	34.80	8.50	22.00	10.50	11.00	12.50	1.20	14.50	-8.60	16.50	-17.40
.55	87.85	2.55	67.70	4.55	49 65	6.55	34.45	8.55	21.70	10 55	10.75	12.55	.90	14.55	-8,85	16.55	-17.60
.60	87.30	2.60	67.20	4.60	49.30	6.60	34.10	8.60	21 40	10.60	10.50	12.60	.60	14.60	-9.10	16.60	-17.80
.65	86.80	2.65	66.70	4.65	48.85	6.65	33.80	8.65	21.10	10.65	10.25	12.65	.35	14.65	-9 30	16.65	-18 05
.70	86.30	2.70	66.20	4.70	48.40	6.70	33 50	8.70	20.80	10.70	10 00	12.70	.10	14.70	-9.50	16.70	-18.30
.75	85.75	2.75	65.75	4.75	47.95	6.75	33.15	8.75	20.55	10.75	9.75	12.75	-.20	14.75	-9.75	16.75	-18.55
.80	85.20	2.80	65.30	4.80	47.50	6.80	32.80	8.80	20.30	10.80	9.50	12.80	-.50	14.80	-10.00	16.80	-18.80
.85	84.70	2.85	64.90	4 85	47.15	6.85	32.50	8.85	20.05	10.85	9 25	12.85	-.75	14.85	-10.20	16.85	-19.00
0	84.20	2.90	64.50	4.90	46.80	6.90	32.20	8.90	19.80	10.90	9.00	12.90	-1 00	14 90	-10.40	16.90	-19.20
5	83.65	2.95	63.95	4.95	46.35	6.95	31.85	8.95	19.50	10.95	8.75	12.95	-1.20	14.95	-10.60	16.95	-19.35
0	83.10	3.00	63.40	5.00	45.90	7.00	31.50	9.00	19.20	11.00	8.50	13.00	-1.40	15.00	-10.80	17.00	-19.50
5	82.50	3.05	62 95	5.05	45.50	7.05	31.15	9.05	18.85	11.05	8.25	13.05	-1.65	15.05	-11.00	17.05	-19.75
0	81.90	3.10	62.50	5.10	45.10	7.10	30.80	9.10	18.50	11.10	8.00	13.10	-1.90	15.10	-11.20	17.10	-20.00
5	81.40	3.15	62.00	5.15	44.75	7.15	30.50	9.15	18.20	11.15	7 70	13.15	-2.15	15.15	-11.40	17.15	-20.25
0	80.90	3.20	61.50	5.20	44.20	7.20	30.20	9.20	17.90	11.20	7.40	13.20	-2.40	15 20	-11.60	17.20	-20.50
5	80.40	3.25	61.00	5.25	43.85	7.25	29.85	9.25	17.60	11.25	7.20	13.25	-2.60	15.25	-11.85	17.25	-20.75
0	79 90	3.30	60.50	5.30	43.50	7.30	29.50	9.30	17.30	11.30	7.00	13.30	-2.80	15.30	-12.11	17.30	-21 00
5	79.45	3.35	60.15	5.35	43.05	7.35	29.25	9.35	17.05	11.35	6.75	13.35	-3.05	15.35	-12.40	17.35	-21.15
0	79.00	3.40	59.80	5.40	42.60	7.40	29.00	9.40	16.80	11.40	6.50	13.40	-3.30	15.40	-12.70	17.40	-21.30
5	78.50	3.45	59.30	5.45	42.25	7.45	28.65	9.45	16.50	11.45	6.25	13.45	-3.55	15.45	-12.90	17.45	-21.55
0	78.00	3.50	58.80	5.50	41.90	7.50	28.30	9.50	16.20	11.50	6.00	13.50	-3.80	15.50	-13.10	17.50	-21.80
5	77.50	3.55	58.35	5.55	41.55	7.55	28.00	9.55	16.00	11.55	5.80	13.55	-4.00	15.55	-13.30	17.55	-21.95
0	77.00	3.60	57.90	5.60	41.20	7.60	27.70	9.60	15.80	11.60	5.60	13.60	-4.20	15.60	-13.50	17.60	-22.10
5	76.50	3.65	57.40	5.65	40.80	7.65	27.30	9.65	15.50	11.65	5.35	13.65	-4.45	15.65	-13.75	17.65	-22.35
0	76.00	3.70	56.90	5.70	40.40	7.70	26.90	9.70	15.20	11.70	5.10	13.70	-4.70	15.70	-14.00	17.70	-22.60
5	75.50	3.75	56.55	5.75	40.15	7.75	26.70	9.75	14.95	11.75	4.85	13.75	-4.95	15.75	-14.20	17.75	-22.80
0	75.00	3.80	56.20	5.80	39.90	7.80	26.50	9.80	14.70	11.80	4.60	13.80	-5.20	15.80	-14.40	17.80	-23.00
5	74.50	3.85	55.75	5.85	39.50	7.85	26.20	9.85	14.45	11.85	4.35	13.85	-5.55	15.85	-14.65	17.85	-23.25
0	74.00	3.90	55.30	5.90	39.10	7.90	25.90	9.90	14.20	11.90	4.10	13.90	-5.90	15.90	-14.90	17.90	-23.50
5	73.45	3.95	54.80	5.95	38.70	7.95	25.50	9.95	13.95	11.95	3.80	13.95	-6.05	15.95	-15.10	17.95	-23.70

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GENERAL FORMS FOR ACKNOWLEDGMENT

Applicable in Oklahoma, Kansas, Arkansas, Texas and New Mexico

CORPORATE FORM

STATE OF Texas }
COUNTY OF Harris } ss.

Before me, the undersigned authority, on this day personally appeared John L. Sumans of Houston, Texas, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the free act and deed of the said Humble Oil & Refining Corp., a corporation, and that he having been duly authorized by the board of directors of said corporation, executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office at Houston, Tex. this the 21 day of January A. D., 19 41.

My Commission Expires June 1, 1941 — N. H. Hathaway

Notary Public in and for Harris County, Texas

CORPORATE FORM

STATE OF ..... }
COUNTY OF ..... } ss.

Before me, the undersigned authority, on this day personally appeared .....

of ....., known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the free act and deed of the said .....

....., a corporation, and that he having been duly authorized by the board of directors of said corporation, executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office at ..... this the ..... day of ....., A. D., 19.....

My Commission Expires..... — .....

Notary Public in and for .....

County, ...

No. ..... Standard Form Revised

CASINGHEAD GAS CONTRACT

FROM

.....

.....

TO

.....

.....

.....

Dated ....., 19.....

Lot..... Block..... Addition.....

Section..... Township..... Range.....

..... County, ...

No. of Acres..... Term.....

STATE OF .....
COUNTY OF ..... } ss.

This instrument was filed for record on the .....day of....., 19....., at.....o'clock.....M., and duly recorded in Book....., Page....., records of this office.

.....
County Clerk—Register of Deeds

By .....
Deputy.

When Recorded
Return to
—

.....

These blanks Printed by THE OLDS PRESS, Tulsa, Okla., U.S.A.
211 East Third Street, one-half block east of Hotel Tulsa
Phone 4-9421. Mail or phone orders filled same hour received.
Write for our complete Catalog of Oil Field Forms

INDIVIDUAL FORM

STATE OF ..... }
COUNTY OF ..... } ss.

Before me, the undersigned, a Notary Public, in and for said County and State, on this.....day of

....., 19....., personally appeared.....

.....and

.....

o me known to be the identical person..... who executed the within and foregoing instrument and acknowledged to me that.....

xecuted the same as.....free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

My Commission Expires..... — — — .....Notary Public

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EXHIBIT A

Casinghead Gas Contract

This Agreement, Made and entered into this 7th day of May, 1951, by and between International Petroleum Corporation

hereinafter referred to as the "Seller" and PHILLIPS PETROLEUM CO.

hereinafter referred to as the "Buyer".

WITNESSETH: WHEREAS, Seller owns and holds a certain valid and subsisting oil and gas mining lease covering the following described lands situate and being within the County of Grand & Uintah, State of Utah

RECEIVED
NOV 5 11 16 AM '51
OIL & GAS CONSERVATION COMMISSION

NE/4 of the NE/4 and the NE/4 of the NW/4 of Section 10S, Block 2, Uintah Special Survey, C.C.S.D.&R.G.W.&P.R.R.Co. Survey (Above acreage confirmed by Amendment No. 1 dated 11-7-51)

and,

WHEREAS, Seller is operating the above described properties and certain wells on said lands are productive, or may be productive, in addition to oil, of what is termed casinghead gas, (it being understood that the term "casinghead gas" means the gas issuing from oil wells whether produced from the zone and or zones from which the oil is produced or by the introduction of gas with compressors or other means for lifting the oil), and the Seller desires to sell the casinghead gas which may hereafter be produced from all wells located on said premises; and,

WHEREAS, Buyer contemplates the construction of, or has in operation, a gasoline plant in the vicinity of said property and desires to buy said casinghead gas;

NOW, THEREFORE, in consideration of the sum of One ($1.00) Dollar paid by the Buyer to the Seller, receipt of which is hereby acknowledged, and other payments and covenants hereinafter specified, the Seller hereby grants, bargains, sells and agrees to deliver to the Buyer and the Buyer agrees to purchase and take from the Seller, subject to the stipulations and conditions hereinafter specified, all the casinghead gas now or hereafter produced from the wells on the lands hereinabove described.

1—PURPOSE—The gas hereby sold is conveyed to the Buyer for the purpose of manufacturing gasoline or such other products or products as may be recovered at Buyer's plant.

2—DELIVERY PLACE—The delivery of the casinghead gas shall be made at upper side flow tubs and/or gas shoe furnished by Seller and/or at the casinghead of the wells. Buyer may, with Seller's consent, install equipment acceptable to Seller on Seller's casing tubs for the purpose of saving and utilizing vapors therefrom, which vapors for the purpose of this contract shall be considered casinghead gas.

3—DELIVERY DATE—The delivery and reception of said gas shall begin on or before ____, 19__, and Seller is or may and/or agree to pay for said gas by said date shall give the Seller the right to cancel this contract any time thereafter before actual deliveries begins by serving ten (10) days' written notice on Buyer.

4—GRADE AND PRESSURE GAS—The Buyer agrees to take all the gas coming over than 3/4 gallons of gasoline per thousand cubic feet of gas, provided that during such casinghead gas production from the property covered hereby the Buyer shall only be obligated to take ratably as to quantity with all other fluids produced connected to the plant. Seller shall have the right to dispose of any gas not taken or paid for by the Buyer, provided that Buyer shall have the right to take any or all of such gas at any time thereafter conditioned upon Buyer giving Seller at least 30 days' notice of its election to so do.

5—PRESSURE GAS—The Buyer shall secure at the nearest boundary line of the Seller's lease, above described, sufficient casinghead gas for the development and operation of said lease, the amount of such gas not to exceed that remaining from the quantity of casinghead gas delivered to the Buyer from said lease after the extraction of gasoline therefrom, less the proportionate part of said casinghead gas necessary for gasoline plant operation, both determined by the casinghead gasoline tests provided that in the event casinghead gas so to be secured hereunder by the Buyer shall be insufficient in quantity for the purpose of developing and operating said lease, the Seller hereby reserves the right to use casinghead gas from its lease sufficient in quantity to make up the deficiency. Utilization of said casinghead gas so secured by the Buyer shall be at the Seller's risk. In the event Seller accepts said wet gas, furnished by Buyer, in excess of the amounts of casinghead gas to which Seller is entitled, Seller shall pay Buyer for such dry gas so delivered unto to Buyer.

It is agreed and understood by and between the parties hereto, that if and when the casinghead gas remaining after the extraction of gasoline from such casinghead gas shall be more than sufficient for the needs of Buyer in the operation of said gasoline plant and more than sufficient for the development and operating purposes upon the premises from which the said casinghead gas is produced, then, and in such event, Buyer shall have the right to sell any or all surplus casinghead gas as hereinafter provided; but in the event of sale by the Buyer of any or all of such casinghead gas, Buyer shall pay to the Seller twenty per cent of the net proceeds received from the sale of such gas, such payments to be made at the same time as other payments hereunder. The proceeds as herein used is defined as the gross proceeds less any cost of hauling and/or transportation necessary to market such gas. It is further agreed and understood that as a basis of settlement hereunder for the sale of casinghead gas, it shall be determined how much casinghead gas the Seller was entitled to have accounted and the volume that actually was accounted during the month for which settlement is to be made, and the difference shall be regarded as the volume of surplus casinghead gas available for sale from the casinghead gas delivered hereunder. The volume of surplus casinghead gas sold from the casinghead gas delivered hereunder shall be determined by the proportion which the volume of surplus casinghead gas available for sale from said delivery bears to the total volume of surplus casinghead gas available for sale from all casinghead gas delivered to said plant.

6—RELATED GAS—The Seller hereby specifically reserves the right to introduce air, gas, or any other substance whatever into the well or wells covered hereby or into the sand or sands from which said well or wells are producing when in the exclusive judgment of the Seller the introduction of such substance is desirable in the operation of such well or wells for the production of oil even though such well or wells may be entirely dismissed as a producer or producers of casinghead gas; provided that should the Seller's operations under this paragraph create a condition which in the exclusive judgment of the Buyer makes the taking and utilization of casinghead gas therefrom unprofitable to the Buyer, or should such operations tend to endanger the plant or property of Buyer or the lives of Buyer's employees should such fluid or substances be taken, then Buyer, at its election, may discontinue taking the casinghead gas from the particular well or wells which being so operated.

7—RIGHT OF WAY—As far as Seller's lease permits, Buyer is granted the right to lay and maintain lines and to install any necessary equipment on said lease and shall have the right to free entry for any purpose incidental to gasoline plant operations so long as such purpose does not interfere with lease operations or the rights of owners in fee. All line and other equipment placed by Buyer on said lands shall remain the property of the Buyer and, subject to the terms of this contract, may be removed by Buyer at any time.

8—GRAVITY AND TESTS—The gasoline content shall be determined by a field comparator and/or tests in accordance with the Bureau of Mines for testing natural gas for gasoline content. The specific gravity shall be determined in accordance with the specifications and test procedure of said commission, for the determination of specific gravity of natural gases by the Adams method. The test for gasoline content, or yield, and specific gravity of the gas shall be made by the Buyer reasonably except when, in the opinion of either party, change in the method of operation of the lease will affect materially the gasoline content and specific gravity of the gas, in which event the test shall be made at the demand of either party upon ten (10) days' notice to the other party. The Buyer must notify the Seller in writing ten (10) days previous to the proposed time in order that a representative present to witness such test or thereof test, at Seller's option

EXHIBIT A

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and/or cubic feet were with no even appliance. The contract rate shall be computed on the basis of base (1) contract above on assumed atmospheric pressure of

14.6 pounds per square inch absolute and at a base temperature of sixty (60) degrees Fahrenheit

9—DELIVERY—The natural gas delivered hereunder shall be measured by a suitable orifice meter, or meters, of standard make to be furnished, installed and kept in repair by Buyer on the base herein covered. The amount of gas so metered shall be computed on the basis of base (1) contract above on assumed atmospheric

pressure of 14.6 pounds per square inch absolute on a base temperature of sixty (60) degrees Fahrenheit and on an assumed flowing tem-

perature of 60 degrees Fahrenheit. The Buyer shall test, and if necessary adjust and repair, said meter, or meters, as or when the rate the rate for gasoline content are made. Said meter, or meters, shall be open to inspection at all times by Seller in the presence of Buyer. In case any question arises as to the accuracy of the meter measurement said meter, or meters, shall be tested upon the demand of either party. The expense of such tests shall be borne by the party demanding same if the meter is found to be correct and by the Buyer if found incorrect. A registration within 2% of correct shall be considered correct. Settlement for any period of inaccurate measurement shall be in accordance with the average readings taken during the last preceding ten days when the meter was registering accurately and the first ten days after the meter was restored to accuracy. If requested Buyer shall send the charts to Seller for checking after which they are to be returned to Buyer.

10—PRICE—The Buyer shall pay to Seller for the casinghead gas delivered hereunder a price per thousand cubic feet to be computed on the following basis

1. When gasoline content is less than .75 gallons per thousand cubic feet:
   (a) When average price is 2c per gallon, or less, 9% of the value of the gasoline
   (b) When average price is more than 2c, but less than 4c per gallon, 10% of the value of the gasoline
   (c) When average price is 4c, but less than 6c per gallon, 11% of the value of the gasoline
   (d) When the average price is 6c per gallon, or more, 12% of the value of the gasoline.

2. When gasoline content is .75 gallons per thousand cubic feet, but less than 1.25 gallons per thousand cubic feet
   (a) When average price is 2c per gallon, or less, 10% of the value of the gasoline
   (b) When average price is more than 2c, but less than 4c per gallon, 11% of the value of the gasoline
   (c) When average price is 4c, but less than 6c per gallon, 12% of the value of the gasoline
   (d) When the average price is 6c per gallon, or more, 13% of the value of the gasoline

3. When gasoline content is 1.25 gallons per thousand cubic feet, or above
   (a) When average price is 2c per gallon, or less, 11% of the value of the gasoline
   (b) When average price is more than 2c, but less than 4c per gallon, 12% of the value of the gasoline
   (c) When average price is 4c, but less than 6c per gallon, 13% of the value of the gasoline
   (d) When the average price is 6c per gallon, or more, 14 1/2% of the value of the gasoline

The value of the gasoline contained in a thousand cubic feet of gas shall be determined by multiplying the gasoline content hereinabove determined as hereinabove pro-

vided by the average sales price for 68-70 natural gasoline, or its equivalent, as quoted in the National Petroleum News for the settlement period.

11—PAYMENT—Payment shall be made by the Buyer not later than the 20th day of each month for all casinghead gas produced hereunder during the preceding month, and at the time payment is made a statement showing full details of the gas purchased shall be represented to the Seller accompanying the Buyer's check in payment therefor. Examination by the Seller of the books of account kept by the Buyer respecting said gas accounts shall be permitted by the Buyer at any and all reasonable hours.

12—TITLE—The Seller warrants to title to said gas and that it has good right to sell said gas to Buyer but the Buyer shall not be required to make payments until the Seller shall have submitted abstracts of title covering said leasehold showing good and merchantable title to it and that it has good right to sell said casinghead gas, all to the satisfaction of the attorneys of the Buyer, provided however if the title of Seller is questioned, or involved in any action, the Buyer shall have the right to withhold payment during the pendency of such action or until said title is freed from such question, or until Seller furnishes bond satisfactory to save Buyer harmless with surety acceptable to the Buyer.

13—ROYALTY—The Seller agrees to account and pay to the lessors or royalty owners on the lease above described, in strict accordance with the provisions thereof, the royalty on the casinghead gas sold and delivered hereunder to Buyer.

14—VACUUM—Upon request of Seller the Buyer shall apply and maintain on Seller's wells a vacuum substantially equal to that maintained on other wells by gaso-line plants. Up on such maximum Seller shall have control of said vacuum at all times.

15—USE—The Buyer shall keep reasonably clear of obstruction all its pipe lines through which said gas is being delivered and shall own all liquid collected in such lines

16—CASUALTY—Any failure of either party hereto to perform any of the obligations hereunder shall be excused if such failure is due to fire, strike, flood, lack of water, roads, lightning, accidents or any circumstances beyond the control of the party failing to perform.

17—UNPRODUCTIVE GAS—In the event the casinghead gas from any well or wells on said lease becomes unfitness or reduce or gasoline content, or for any cause becomes unprofitable for the extraction of gasoline therefrom, the Buyer shall have the right to cease taking the gas so long as such condition exists. It is further provided that if at any time the volume and/or gasoline content of the gas available to Buyer, or if any cause beyond its control, shall render the economical and/or operation of said plant unprofitable, Buyer may, by thirty days' written notice and payment, or tender, to Seller of Ten ($10.00) Dollars, cancel this contract.

18—PROPERTY RIGHTS OF BUYER—Any and pipelines are being operated primarily for the purposes of sel, the taking of casinghead gas by the Buyer shall be elsewhere to end of operations. The Seller may, at any time, without liability to Buyer therefor, dispose of abandon any well or wells on the above described properties, or any part thereof, whether or supposed suitable for the production of oil. Before any well or wells on which any of moneys for any cause whatsoever Seller agrees to free and clear of the same from encumbrances with the gathering lines.

19—INDEMNITY—The Buyer shall indemnify and hold the Seller harmless against any claims for damages growing out of the operations conducted hereunder by the Buyer. Likewise the Seller shall indemnify and hold the Buyer harmless against any claims for damages growing out of Seller's operations of the lease herein described.

20—RENTS—In the event the property above described covers more than one lease, the consent shall be construed as a separate contract on each lease.

21—REGULATORY POWERS—This contract shall be subject to all the rules and regulations of any duly constituted federal or state regulatory body having jurisdic-tion hereto.

22—ASSIGNABILITY—In the event of any dispute or controversy between the parties hereto touching the agreement under the contract then shall be settled by arbitration. Each of the parties shall appoint an arbitrator and the two appointed shall select a third. The award of any two arbitrators shall be conclusive upon the parties and shall be made within thirty days after the appointment of the two arbitrators.

23—ARBITRATION—Seller may shall have the right to terminate the contract as to the interest in [illegible] upon thirty days notice by giving the other party three (3) days' notice in writing of its intention so to do, after which said party shall be allowed thirty (30) days within which to remedy the default complained of, and if the same is remedied within said period, said notice shall be ineffective, but if the default complained of is not remedied within said period, this contract shall terminate as to the interest of the party in default, without prejudice however to the rights of the parties as they may have accrued up to the time of the termination.

24—ASSIGNMENT—This contract shall extend to and be binding upon the parties hereto, their heirs, successors and assigns, but no transfer or assignment of this contract, or any part thereof, shall be made by either party hereto without the written consent of the other party hereto first had and obtained, which consent shall not be unreasonably withheld.

25—NOTICES—Any notice, request or demand required or permitted to be given by either party hereto to the other shall be deemed to have been fully given when delivered personally to the party to whom it is directed, or when deposited in the United States mail, postage prepaid, addressed to such party at [illegible], and any notice given by either party hereto shall be deemed to have been fully given when deposited in the United States mail, postage prepaid, addressed to such party at [illegible].

26—MISCELLANEOUS—This contract shall be binding upon the parties hereto, their heirs, successors and assigns, but no transfer or assignment of this contract, or any part thereof, shall be made by either party hereto without the written consent of the other party hereto first had and obtained, which consent shall not be unreasonably withheld, except that Buyer may assign this contract to any company with which it may merge or consolidate, or to any company which may purchase all or substantially all of its assets, without the consent of Seller.

27—ENTIRE AGREEMENT—This contract constitutes the entire agreement between the parties hereto and no representations or warranties have been made or relied upon except as expressly set forth herein.

28—MODIFICATION—This contract may be modified or amended only by written instrument executed by both parties hereto.

29—TERMINATION—This contract shall remain in force for a period of [illegible] from the date hereof, and as long thereafter as gas is produced from the lease herein described in paragraph 1 hereof, or on any acreage pooled therewith, or any part thereof, by either party hereto, unless terminated by either party hereto by giving to the other party written notice of its intention so to do, at least thirty (30) days prior to the end of the primary term or any time thereafter, in which event this contract shall terminate as to all of the lands covered hereby at the end of the primary term or any time thereafter, as the case may be, except as to the lands then pooled with a well or wells producing or capable of producing gas in paying quantities.

30—EXECUTION—This contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument, binding all parties hereto, notwithstanding all parties are not signatory to the original or the same counterpart.

31—OTHER PROVISIONS—[illegible]

IN WITNESS WHEREOF, this instrument is executed by Buyer and Seller hereinabove named on the respective dates of their acknowledgments hereto attached, but effective as of the 1st day of [illegible], 1940.

[illegible]

[illegible]

[illegible]

IN WITNESS WHEREOF the parties have hereunto subscribed their names

INTERNATIONAL PETROLEUM CORP.

H. Wilcoxon Sikes
President.

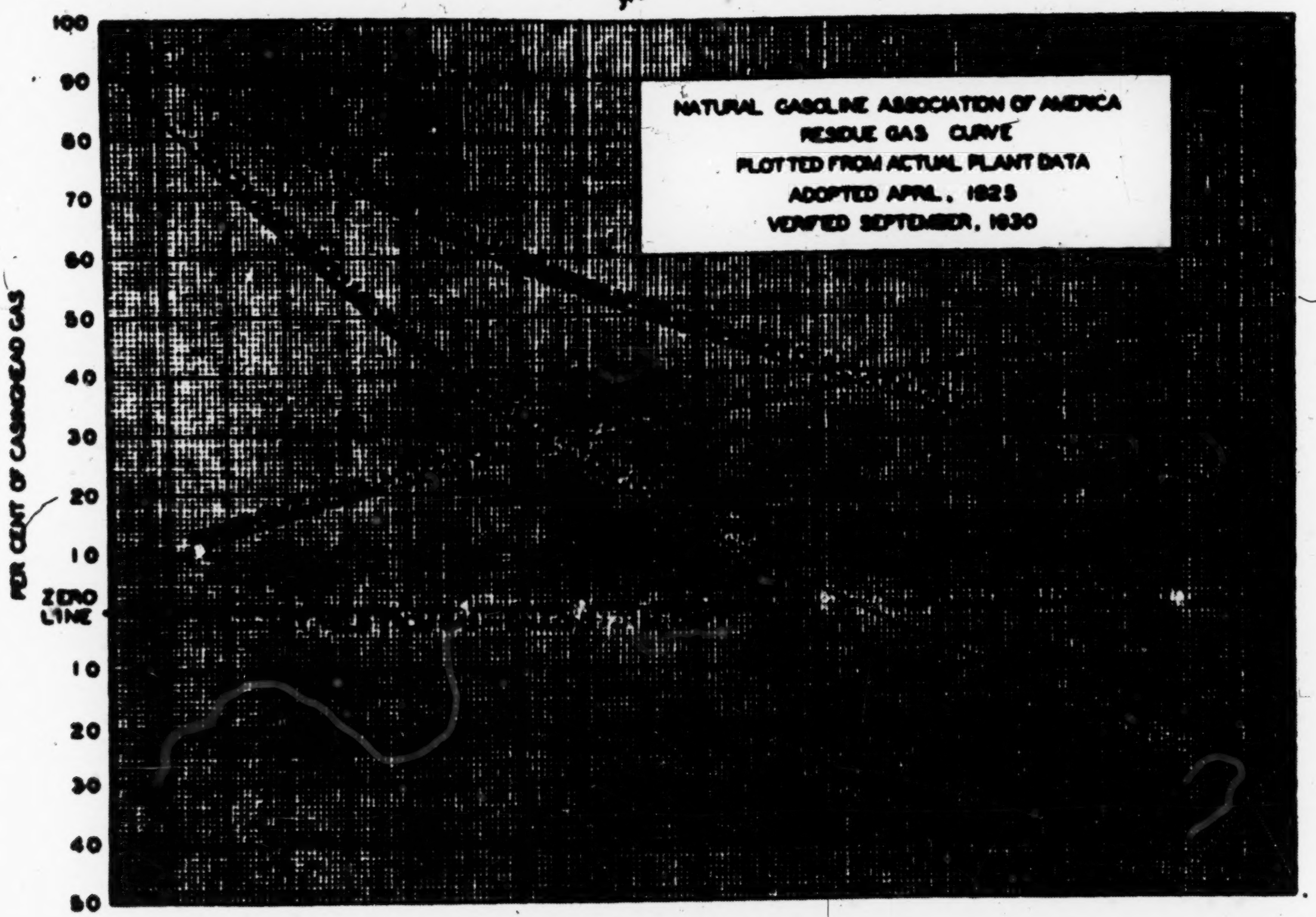
ATTEST:

Assistant Secretary

PHILLIPS PETROLEUM COMPANY

BY

Vice President



N.G.A.A. Standard Table, adopted February 9, 1932, showing the per cent of casinghead gas returnable as residue after extraction and plant use as shown by Natural Gasoline Association of America residue gas curve.

G.P.M.	%RET.	G.P.M.	%RET.	G.P.M.	%RET.	G.P.M.	%RET.	G.P.M.	%RET.	G.P.M.	%RET.	G.P.M.	%RET.	G.P.M.	%RET.	G.P.M.	%RET.

STATE OF TEXAS }
COUNTY OF TARRANT }

Before me, the undersigned authority, on this day personally appeared F. H. Cornelius, President of International Petroleum Corporation known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the free act and deed of the said International Petroleum Corporation, a corporation, and that he having been duly authorized by the board of directors of said corporation, executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated

Given under my hand and seal of office at Ft. Worth, Texas this the 7th day of May, A.D. 1936

My Commission Expires June 1, 1937

Notary Public in and for Tarrant County, Texas.

CORPORATE FORM

STATE OF OKLAHOMA }
COUNTY OF WASHINGTON }

Before me, the undersigned authority, on this day personally appeared F. E. RICE, Vice President of PHILLIPS PETROLEUM COMPANY known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the free act and deed of the said PHILLIPS PETROLEUM COMPANY, a corporation, and that he having been duly authorized by the board of directors of said corporation, executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated

Given under my hand and seal of office at BARTLESVILLE this the 16th day of May, A.D. 1936

My Commission Expires Oct. 20, 1938

Notary Public in and for STATE OF OKLAHOMA

No.

STANDARD OIL AND GAS CONTRACT

Standard Form Revised

FROM

TO

Dated

Lot Block Addition

Section Township Range

County, Texas

No. of Acres

STATE OF }
County of }

This instrument was filed for record on the day of 19, at o'clock M., and duly recorded in Book Page of the records of this office.

By County Clerk, Deputy.

THE OLEN PRESS, TULSA, OKLA. U.S.A.

INDIVIDUAL FORM

STATE OF }
COUNTY OF } ss

Before me, the undersigned, a Notary Public, in and for said County and State, on this day of 19, personally appeared and

to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that executed the same as free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

My Commission Expires Notary Public

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No.....

HUMBLE OIL & REFINING COMPANY,

Petitioner,

v.

FEDERAL POWER COMMISSION,

Respondent.

PETITION FOR REVIEW OF ORDER OF THE FEDERAL POWER COMMISSION

To the Honorable, the United States Court of Appeals for the Fifth Circuit:

I.

NATURE OF PROCEEDINGS

Comes now Humble Oil & Refining Company (Petitioner) and files this, its petition for review of the "Opinion and Order Affirming Examiner's Decision," issued by the Federal Power Commission (Commission) on September 9, 1955, *In the Matter of Deep South Oil Company of Texas, Shell Oil Company,* and *Humble Oil & Refining Company,* Docket Nos. G-2952, G-4671 and G-5261, respectively. By said opinion and order, designated by the Commission and hereinafter referred to as "Opinion No. 284," the Commission determined that certain sales by Petitioner of casinghead gas are subject to regulation under the Natural Gas

Act (Act).[1] Being aggrieved by such opinion and order of the Commission, Petitioner respectfully petitions this Court for review thereof, and in support of its petition, would show the following:

II.

QUESTION PRESENTED

The question presented herein is whether sales by Petitioner of casinghead gas wholly within the fields where produced to plant owners for processing, are subject to regulation by the Federal Power Commission under the Natural Gas Act where a portion of the residue gas derived from the processing operation may, upon its sale by the plant owner, move in commerce.

III.

FACTS ON WHICH JURISDICTION IS BASED

Petitioner is a private corporation organized under the laws of the State of Texas. Its principal office and place of business are in Houston, Texas.

Respondent is a public body known as the Federal Power Commission, originally created pursuant to the Act of Congress of June 10, 1920 (41 Stat. 1063), and organized as an independent Commission by the Act of June 23, 1930 (46 Stat. 797). The present members of said Commission are Jerome K. Kuykendall, Chairman, Claude L. Draper, Seaborn L. Digby, Frederick Steuck and William R. Connole, and its principal office is in Washington, District of Columbia.

As hereinafter more fully set forth, Petitioner filed with the Commission on November 26, 1954, its "Petition for Declaratory Order to Remove Uncertainty Concerning Sales of Casinghead Gas at or near the Well Arising from the

[1] Act of June 21, 1938, 52 Stat. 821, 15 U.S.C. 717, *et seq.*

Issuance of Order No. 174-A and for Declaration of Status." Such petition was by the Commission assigned Docket No. G-5261, and, together with the aforesaid Docket Nos. G-2952 and G-4671, was decided by the Commission in its Opinion No. 284. Such decision was wholly adverse to and aggrieves Petitioner.

Petitioner thus became a party to a proceeding under the provisions of the Act aggrieved by an order issued by the Commission in such proceeding, all within the meaning of Section 19(b) of such Act (52 Stat. 821, 15 U.S.C. 717r). In pertinent part, Section 19(b) provides as follows:

> "Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part."

It is thus apparent that this petition for review is properly addressed to this Honorable Court and that it has jurisdiction to entertain the same.

IV.

GROUNDS ON WHICH RELIEF IS SOUGHT

A. Proceedings Before the Commission

On November 26, 1954, Petitioner filed with the Commission its "Petition for Declaratory Order to Remove Uncertainty Concerning Sales of Casinghead Gas at or near the

Well Arising from the Issuance of Order No. 174-A and for Declaration of Status." Such petition was filed pursuant to Section 1(c) of the Commission's Rules of Practice and Procedure [18 C.F.R. 1.7(c)] and to Section 5(d) of the Administrative Procedure Act [60 Stat. 237, 239, 5 U.S.C. 1001, 1004(d)].

In that petition, Petitioner referred to certain of its casinghead gas operations and contracts which are hereinafter described. Petitioner asserted therein that its sales of casinghead gas under such contracts are not covered by the Act and the Commission's Order No. 174-A[2] for the following reasons (p. 5):

> "1. The sales of casinghead gas are not in interstate commerce.
>
> 2. The sales involved are not for resale but are sales for processing.
>
> 3. The casinghead gas sold by Petitioner is not the same product as the surplus residue gas which is sold by the buyer after the intervention of processing.
>
> 4. The sales of casinghead gas and all facilities used in consummating such sales are within the production and gathering exemption of 1(b) of the Natural Gas Act."

Wherefore, Petitioner requested that the Commission (p. 7):

> "1. Issue a declaratory order declaring whether or not it is asserting jurisdiction over the sales of casinghead gas made pursuant to Petitioner's status as to such casinghead gas sales and that as to such sales,

[2] By Order No. 174-A, issued August 6, 1954 (19 F.R. 5081), and its successor, Order No. 174-B, issued December 18, 1954 (19 F.R. 8808), the Commission promulgated its Regulations under the Natural Gas Act specially applicable to "independent producers," as defined therein. See 18 CFR 154.91-154.102, 157.23-157.29.

declare that Petitioner is not a natural gas company under the Natural Gas Act.

2. Determine Petitioner's status as to such casinghead gas sales and that as to such sales, declare that Petitioner is not a natural gas company under the Natural Gas Act."

Proceedings on such petition were consolidated by the Commission for purpose of hearing with proceedings on similar petitions filed by Deep South Oil Company of Texas, at Docket No. G-2952, and Shell Oil Company, at Docket No. G-4671. Hearings were held on the consolidated proceedings at Washington, D. C., commencing on November 29, 1954, continuing through December 2, 1954, and resuming and concluding on January 10, 1955. At such hearings, Petitioner established, among others, the facts set forth in the following groups:

(1) Petitioner's request for status determination comprehended 48 contracts whereby casinghead gas, a commodity described hereinbelow, is sold by Petitioner wholly within the fields where produced for processing in plants owned by others in or near such fields and constructed for such processing. Such contracts involve sales in many different oil fields and fall into three groups. In the first group, there are 36 casinghead gas contracts under which Petitioner is seller and a plant operator is buyer. In the second group, there are eight contracts for the sale of casinghead gas by Petitioner to El Paso Natural Gas Company, upon a form with a special clause relating to the payment for residue gas, a commodity derived from casinghead gas by processing. In the third group, there are four sales of casinghead gas under contractual instruments, referred as to "Division Orders."

(2) Casinghead gas, the substance sold under the foregoing contracts, is gas produced along with oil from

oil wells. It is a means or force by which oil is propelled to the mouths of the wells. It always contains one or more impurities, such as carbon dioxide, nitrogen, helium, water vapor, free water, drilling mud, rust, sand, dirt, and various sulphur compounds, as well as valuable liquefiable constituents, such as ethane, propane, butane, pentane, and heavier components, including natural gasoline. Methane is the principal constituent of natural gas which is used as a domestic or industrial fuel and, accordingly, both the impurities and valuable liquefiable constituents must first be removed from casinghead gas to produce residue or natural gas meeting these standards.

(3) Since casinghead gas inevitably is produced along with oil, some disposition must be made of it when it reaches the surface. In remote areas or where it may be produced in small quantities, there may be no economic use to which it can be put, other than for fuel or power to permit field operations. In this event, the excess casinghead gas may be flared or burned. In other instances, where a market exists or can be developed and if the casinghead gas has sufficient richness to justify removal of the desirable liquefiable constituents, it may be gathered into a casinghead gas plant for processing. After processing for the removal of impurities and foreign materials and extraction of the liquids, the dry residue gas may be delivered either to local markets or to further gathering lines which take it to the main lines of gas transmission companies. A part or all of the residue gas remaining from these operations, however, may, in accordance with the sales contracts, be returned to the lease for use as fuel or power. In addition, some of the casinghead gas may be returned to the reservoir or to the wells to assist in lifting oil from the reservoir.

(4) Under typical operations involved in a casinghead gas processing plant, raw casinghead gas moves with the oil out of the wellhead through flow lines to a

central point, usually on the lease and in a few instances on adjoining leases, at which are located lease stock tanks and separators wherein the crude oil is separated from the casinghead gas. The casinghead gas then moves out of the upper part of the separator through a meter and, if it is not flared or burned, passes through a plant gathering system into the casinghead gas processing plant. Within the plant, it is processed for two purposes: (a) to remove the heavier liquefiable hydrocarbon constituents which have value as such and which make the operation economically feasible; and (b) to remove impurities or other materials, such as sulphur compounds or water vapor. Within the plant, the casinghead gas so gathered, commingled with casinghead gas from other leases, passes through a plant inlet meter into a scrubber where condensed liquids, certain impurities and other materials, including water, are removed. The casinghead gas thereafter passes out of the top of the scrubber through a set of compressors which increase its pressure substantially, and thence moves into the lower side of an absorber. The gas passes upward in the absorber counter-current to absorption oil, which is injected into the top portion of the absorber and which serves as a medium to remove the liquefiable constituents. The stripped gas, from which the liquids and impurities have been removed, passes out of the top of the absorber as residue gas. From this point, the residue gas may be returned to the lease for lease operations, or for repressuring of the reservoir, or may be sold for local use, or may be delivered into the gathering lines of an interstate transmission company. In the latter event, or if the gas is to be moved any substantial distance or is to encounter low temperatures, it is necessary that it be further dehydrated. All of the residue gas produced in the plant is normally metered, regardless of its disposition.

(5) The absorption oil, which is passed counter-current to the raw casinghead gas in the absorber, issues from the bottom of the absorber. The mixture of mate-

rials then passes to a still where the temperature of the enriched absorber oil is raised and the hydrocarbon constituents, which have been absorbed into the absorber oil, are driven off by heat and pass out at the top of the still. From the still, such material is passed to the de-ethanizer where ethane is fractionated or distilled away and the remaining liquids, to wit, the propane and heavier hydrocarbons and other constituents making up natural gasoline, pass out the bottom of the de-ethanizer into another fractionater, normally called a de-propanizer. Here, the propane is removed by fractionization and the mixture then passes into a debutanizer, where a similar operation takes place to remove the butane. The remaining gasoline — consisting largely of pentanes, hexanes, and heavier hydrocarbons, but containing some butane — issues from the bottom of the de-butanizer and passes to storage for sale to available markets.

(6) The operations described in (3)-(5) above are typical of the lease operations and casinghead gas plant operations in regard to the casinghead gas contracts entered into by Petitioner as a lease owner, which were the subject of the aforesaid petition filed on November 26, 1954. Such operations are included within the term "production operations," as that term is generally understood in the industry, and facilities used in such operations are similarly known as "production facilities." The only exception to this statement are the "gathering" lines of the gas transmission company which pick up the residue gas at the exit of the plant and carry it to the interstate pipe line. The lines which carry the raw casinghead gas from the mouth of the well to the lease separator are known as "flow lines," and the lines which carry the raw casinghead gas from the lease separator to the casinghead gas plant are known as "plant gathering lines." The "plant gathering system" extends into and through the plant.

(7) The aforesaid casinghead gas contracts were entered into by Petitioner as lease operator with other

parties, not connected or affiliated with Petitioner, who operate casinghead gas processing plants. Over the years, such contracts have become more or less standardized. Several forms have evolved, the principal one being the "Standard Form Revised -- Adopted by the Natural Gasoline Association of American November 7, 1932," called the 1932 Form. Another form, which varies only slightly from the 1932 Form is the "Standard Form 1939 -- formerly sponsored by the Natural Gasoline Association of America," called the 1939 Form. Sometimes, companies print their own forms, which involve minor variations from these Standard Forms. Another type of contract here involved is the El Paso Form, which is, in effect, the 1939 Form with a special clause relating to payment for residue gas.

(8) The same basic contractual provisions obtain under all of these types of casinghead contracts. The lease operator contracts to sell and deliver the raw casinghead gas available from the lease to the plant operator, provision being made for the return to him of sufficient residue gas to permit lease operations. The sales of casinghead gas are for processing. The point of delivery, and at which title passes, is the outlet of the lease separator, usually located on the lease. As consideration for the raw casinghead gas, the processing plant operator pays the lease operator: (a) an amount which is determined by what the plant operator receives from his sale of the liquid products recovered and sold; plus (b) a portion, usually 50%, of the net proceeds received by the plant operator from his sale of whatever volume of residue gas remains after lease and plant uses. The amount of the consideration thus depends upon the price or value at which the plant owner makes his sale of the residue gas to whatever customer he may have, upon the richness of the casinghead gas, and, in some cases, upon the total volume of casinghead gas processed at the plant. The lease owner has no voice in the disposition of the residue gas, and

the plant owner is not required to advise him as to how or to whom the gas is sold.

(9) As indicated in (1) above, Petitioner's contracts for the sale of casinghead gas here involved fall into three groups. The first group includes thirty-six (36) contracts written upon a form of casinghead gas contract entitled "Standard Form Revised — Adopted by the Natural Gasoline Association of America, November 7, 1932," or upon "Standard Form 1939, Formerly Sponsored by the Natural Gasoline Association of America," or upon forms of contract substantially similar thereto. The second group includes eight (8) contracts upon the El Paso Form, being the foregoing "Standard Form 1939" with a special clause relating to the payment for residue gas. The only basic difference between sales under the El Paso Form and those under the 1932 Form or 1939 Form is that in the El Paso Form the plant operator is required to account to Petitioner as lease operator for all of the residue gas upon the basis of certain prices set forth therein, such prices for the residue gas varying with the depth from which the casinghead gas is produced and the time or period during which it is sold. The third group includes Petitioner's sales of casinghead gas under 4 contracts designated as Gas Division Orders.

(10) Under all but two[3] of Petitioner's casinghead gas contracts, title to the casinghead gas passes to the purchaser at the lease separator. Thus title to the casinghead gas passes to the buyer before the gas leaves the lease from which it is produced, before any processing is begun, and before any movement in commerce is begun. Petitioner, as seller, has no control over the buyer's sale of the residue gas and no knowledge as to the buyer's intended disposition of such residue gas. Petitioner's casinghead gas contracts,

[3] In the two excepted cases, the delivery points at which title passes are on adjoining leases, 2,340 and 3,020 feet, respectively, away from the separator on the leases from which the gas was produced.

here involved, are those where, upon inquiry of the plant operator, Petitioner was informed that a portion of the residue gas may move across a state line after its sale by the plant operator. In each such case, Petitioner was informed by the plant operator merely that a part of the total residue gas which the plant operator sold, thereafter moved across a state line. Petitioner received no definite information that any part of the residue gas derived from Petitioner's casinghead gas moved across a state line.

(11) "Work-out" statements, showing the respective amounts of money paid to Petitioner as a seller of casinghead gas to a plant operator, indicate that the payment in each case is determined by the proceeds derived from the plant operator's sale of the liquid products and from his sale of residue.

(12) Petitioner's sales of casinghead gas under the four contracts designated as Gas Division Orders are sales of a slightly different nature. A Gas Division Order is sometimes employed in lieu of a casinghead gas contract where a non-operating lease owner desires to authorize an operator to take or sell his casinghead gas. Such Division Order provides that the lease owner shall receive payment for his gas on the same basis that the operator receives payment for his own casinghead gas. A Gas Division Order is generally employed where there is a multiplicity of small working interests and where it is desired not only to authorize the sale of casinghead gas owned by such interests, but also to set out the division of such interests. However, as in the other instances, delivery of the casinghead gas is here made at the outlet of the seperator on the lease, and the seller has no control over the buyer's sale of the residue gas. The seller, however, can terminate a Gas Division Order at any time.

(13) The Superintendent of Petitioner's Gas Division has the responsibility to assure compliance by Petitioner with laws and regulations relating to gas.

Despite repeated inquiries, he was unable to obtain advice as to whether casinghead gas contracts, such as here involved, were covered by the Commission's Order No. 174-A, whereby the Commission promulgated its Regulations under the Natural Gas Act for application to independent producers. During September 1954, Petitioner's Superintendent and attorneys discussed the status of such casinghead gas contracts under said Order No. 174-A with members of the Commission and of its staff, but repeated requests for clarification did not result in advice, either formally or informally, as to whether such casinghead gas contracts are covered by Order No. 174-A. Petitioner thereafter filed its aforesaid petition on November 26, 1954.

After the conclusion of hearings on that petition, briefs were filed by the parties with the Presiding Examiner. On April 5, 1955, he issued his decision "Upon Petitions for Orders to Remove Uncertainties as to Status," in the consolidated Docket Nos. G-2952, G-4671 and G-5261 wherein he declined to adopt the position of Petitioner, as set forth in its petition, and specifically rejected each and all of the four separate grounds which Petitioner had urged in support of its position. Thereafter, in accordance with Section 1.31 of the Commission's Rules of Practice and Procedure (18 CFR 1.31), Petitioner timely filed on May 23, 1955, its "Exceptions to Decision of Presiding Examiner & Brief of Humble Oil & Refining Company in Support of Exceptions."

On June 13, 1955, the Commission heard oral argument on such exceptions and on similar exceptions filed by Petitioners in the allied Docket Nos. G-2952 and G-4671. Thereafter, on September 9, 1955, the Commission issued its Opinion No. 284. Commissioner Digby filed a separate statement, dissenting in part and concurring in part.

By Opinion No. 284, the Commission affirmed the decision of the Presiding Examiner, denied the petition filed by Petitioner on November 26, 1954, declared each of the sales referred to in (1) above to be subject to regulation under the Act, and formally determined Petitioner to be a "natural-gas company" by reason of such sales.

In accordance with the provisions of Section 19(a) of the Act (52 Stat. 831, 15. U.S.C. 717r), and Section 1.34 of the Commission's Rules of Practice and Procedure (18 CFR 1.34), Petitioner on October 4, 1955, timely filed its "Application for Rehearing," requesting that the Commission abrogate Opinion No. 284. In its "Application for Rehearing," Petitioner observed that the Commission affirmed without qualification the decision of the Presiding Examiner and incorporated therein its "Exceptions to Decision of Presiding Examiner & Brief of Humble Oil & Refining Company in Support of Exceptions" expressly relying upon each and every such exception. In addition, Petitioner noted therein that the Commission in Opinion No. 284 deemed it desirable to set forth its reasons for affirmance of the Presiding Examiner's decision. Petitioner asserted that the Commission, in so doing, committed still further errors which Petitioner detailed in its "Application for Rehearing."

On November 4, 1955, the Commission issued its "Order Denying Rehearing" in the consolidated Docket Nos. G-2952, G-4671 and G-5261. Commissioner Digby dissented.

The Commission has thus held that all of Petitioner's sales of casinghead gas under the several contracts hereinabove referred to are sales in interstate commerce for resale and are subject to regulation by the Federal Power Commission under the Natural Gas Act. The effect of the decision is to render subject to regulation by the Commission every sale of casinghead gas, including a sale by the

owner or operator of a single well, where a portion of the residue gas, upon its sale by the plant owner, may move in interstate commerce for resale.

B. Objections to the Order of the Commission[4]

As already indicated, Petitioner has set forth its objections to the Commission's Opinion No. 284 and orders included therein in Petitioner's "Exceptions to Decision of Presiding Examiner & Brief of Humble Oil & Refining Company in Support of Exceptions" and in Petitioner's "Application for Rehearing." In this, its petition to this Honorable Court, Petitioner hereby reiterates, urges, and expressly relies upon each and every such objection.

Principal among the objections thus urged by Petitioner are those addressed to the following errors committed by the Commission in:[5]

> (1) Concluding that Petitioner's sales are sales "in interstate commerce," as that term is used in Section 1(b) of the Act [52 Stat. 821; 15 U.S.C. 717(b)]. Such conclusion is erroneous as a matter of law, is not supported by any substantial evidence, and is contrary to the undisputed evidence.
>
> (2) Concluding as a matter of law that all sales of natural gas are sales in interstate commerce, if a portion of such gas be ultimately transported in interstate commerce or sold and ultimately resold in interstate commerce.
>
> (3) Concluding as a matter of law that the intention and knowledge of Petitioner are unimportant in

[4] Section 19(b) of the Natural Gas Act provides, in part, that "No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do" (52 Stat. 831, 15 U.S.C. 717r).

[5] In such listing, the sales referred to are Petitioner's sales of casinghead gas comprehended by the 48 contracts referred to in Section III A(1), *supra*.

determining whether its sales be sales in interstate commerce or sales in intrastate commerce.

(4) Concluding that the casinghead gas sold by Petitioner flows continuously and without interruption across state lines to the burner tips of the consumer. Such conclusion is erroneous as a matter of law, is not supported by any substantial evidence, and is contrary to the undisputed evidence in the record.

(5) Failing to conclude that the casinghead gas sold by Petitioner is neither suitable for transmission by pipe line over any substantial distance nor fit for ordinary use as commercial or domestic fuel.

(6) Failing to conclude that Petitioner's sales are sales in intrastate commerce and made for the purpose of processing or manufacturing.

(7) Concluding that Petitioner's sales of casinghead gas are sales "for resale," as that phrase is used in said Section 1(b). Such conclusion is erroneous as a matter of law, is not supported by any substantial evidence, and is contrary to the undisputed evidence in the record.

(8) Failing to conclude that Petitioner's sales are sales for processing or manufacture.

(9) Concluding that Petitioner's sales of casinghead gas are sales of "natural gas," as that term is used in the Act, particularly Sections 1(b) and 2(5) thereof [52 Stat. 821, 15 U.S.C. 717(b); 52 Stat. 821, 15 U.S.C. 717a]. Such conclusion is erroneous as a matter of law, is not supported by any substantial evidence, and is contrary to the undisputed evidence in the record.

(10) Concluding as a matter of law that Petitioner is a "natural-gas company," within the meaning of that phrase as used in the Act, particularly in Sections 1(b) and 2(6) thereof.

(11) Concluding that Petitioner and its sales are not excluded from regulation under the Act by said

Section 1(b) which exempts "production or gathering of natural gas." Such conclusion is erroneous as a matter of law, is not supported by any substantial evidence, and is contrary to the undisputed evidence in the record.

(12) Concluding as a matter of law that Petitioner is subject to regulation by the Commission under the terms of the Act and under the Commission's Regulations as promulgated by Order No. 174-A or the successor Order No. 174-B.

(13) Failing to grant Petitioner's prayers, as quoted from its petition at *supra*, pp. 4-5.

(14) Failing to adopt the findings and conclusions proposed by Petitioner at pages 36 through 39 of its brief filed with the Presiding Examiner on February 9, 1955 and repeated at pages 30 through 33 of its brief filed with the Commission on May 23, 1955.

V.

RELIEF PRAYED

WHEREFORE, for all of the foregoing reasons, Petitioner prays:

1. That the Clerk of this Honorable Court serve a copy of this petition upon the Respondent herein, the Federal Power Commission, at its official address: General Accounting Office Building, 441 G Street, N.W., Washington 25, D.C.;

2. That this Court direct said Commission to file with the Clerk of this Court, the official transcript of the record in the proceedings here sought to be reviewed:

3. That this Court set aside in its entirety the said Opinion No. 284, and the "Order Denying Rehearing,"

issued by the Commission on November 4, 1955; and further,

4. That this Court determine and declare, upon consideration of the entire record before the Commission: that Petitioner's sales of casinghead gas here involved are not sales "in interstate commerce," are not sales "of natural gas," are not sales "for resale," are not subject to the Commission's jurisdiction or to regulation under the Act, but are local sales in intrastate commerce for manufacture or processing, and that Petitioner is not a "natural-gas company," within the meaning of that Act.

Respectfully submitted,

REX G. BAKER
NELSON JONES
CARL ILLIG
WILLIAM J. MERRILL
P. O. Box 2180
Houston 1, Texas
BERNARD J. CAILLOUET
CHARLES JANVIER
P. O. Box 626
New Orleans, La.
BERNARD A. FOSTER, JR.
725 15th Street, N.W.
Washington 5, D. C.
Attorneys for Petitioner
Humble Oil & Refining Company

By .....

Dated at Houston, Texas, this
13 day of December, 1955.

THE STATE OF TEXAS
COUNTY OF HARRIS

CARL ILLIG, being first duly sworn, deposes and says he is one of the attorneys for the Petitioner; that he is conversant with the matters set forth in the petition for review; that he has read the above and foregoing petition for review and that the statements of fact contained in such petition for review are true and correct.

Original Signed

CARL ILLIG

SUBSCRIBED AND SWORN To before me this 12 day of December, 1955.

MARY JANE [illegible]

Notary Public in and for
Harris County, Texas
My commission expires:

June 1, 1957

February 24, 1956

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

DEEP SOUTH OIL COMPANY OF TEXAS, Petitioner, v. FEDERAL POWER COMMISSION, Respondent.	}	No. 15,849
HUMBLE OIL & REFINING COMPANY, Petitioner v. FEDERAL POWER COMMISSION, Respondent.	}	No. 15,884
SHELL OIL COMPANY Petitioner v. FEDERAL POWER COMMISSION, Respondent.	}	No. 15,900

MOTION FOR PERMISSION TO FILE SINGLE TRANSCRIPT OF RECORD

TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

The Federal Power Commission, Respondent in the above-entitled causes, respectfully moves this Honorable Court to permit the filing of a single transcript of record in the above proceedings and to consider the certified record filed with this Court in Cause No. 15,849, as supplemented, as compliance with the Order of the Court entered December 19, 1955 in Cause No. 15,884, directing the Respondent to file the transcript of record in accordance with Rule 38 of the Court, as amended.

As ground for said motion, Respondent, Federal Power Commission represents and shows the Court as follows:

The petitions filed in these proceedings are for review of Commission Opinion No. 234 and Order issued September 9, 1955 In the Matters of Deep South Oil Company of Texas, Humble Oil & Refining Company and Shell Oil Company, Docket Nos. G-2052, G-5261 and G-4671.

Respondent certified to this Court the documents upon which Opinion No. 234 and Order issued September 9, 1955 were entered, as

required by Section 19 (b) of the Natural Gas Act and Rule 38 of this Court, as amended, in Cause No. 15,349, Deep South Oil Company of Texas, Petitioner v. Federal Power Commission, Respondent.

By order entered January 11, 1956, the Court granted the motion of Petitioner, Shell Oil Company in Cause 15,300 that the transcript of record filed with this Court in Cause No. 15,349, be considered as having been filed in and as constituting part of and serve as the record in Cause No. 15,300.

WHEREFORE, Respondent, Federal Power Commission, respectfully requests this Honorable Court to permit the filing of a single transcript of record in the above-captioned proceedings.

Respectfully submitted,

/s/ Willard W. Gatchell
Willard W. Gatchell
General Counsel

/s/ W.L. Ellis
William L. Ellis
Attorney

Counsel for Respondent
Federal Power Commission
Washington 25, D. C.

January 26, 1956.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Motion for Permission to File Single Transcript of Record by mailing a copy, properly addressed to:

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Dated at Washington, D. C., this 26th day of January, 1950.

/s/ W. L. Ellis

William L. Ellis
Counsel for Respondent
Federal Power Commission

ORDER ALLOWING ONE TRANSCRIPT OF RECORD TO BE FILED COVERING CASES NOS. 15349, 15384 & 15500 FILED:- February 24, 1956.

(Filed Feb. 24, 1956, /s/ John A. Feehan, Jr., Clerk)

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

DEEP SOUTH OIL COMPANY OF TEXAS, Petitioner		
—v.		No. 15349
FEDERAL POWER COMMISSION, Respondent		
HUMBLE OIL & REFINING COMPANY, Petitioner		
v.		No. 15384
FEDERAL POWER COMMISSION, Respondent		
SHELL OIL COMPANY, Petitioner		
v.		No. 15500
FEDERAL POWER COMMISSION, Respondent		

ORDER

ON CONSIDERATION of the motion filed by the respondent for permission to file a single transcript of record in the above proceedings and to consider the certified record filed with this Court in Cause No. 15,349, as supplemented, as compliance with the Order of the Court entered December 19, 1955 in Cause No. 15,344, directing the Respondent to file the transcript of record in accordance with Rule 38 of the Court, as amended,

IT IS ORDERED that the Respondent be permitted to file a single transcript of record in the above-captioned proceedings, and that the transcript of record filed with this Court in Cause No. 15,349, be considered as having been filed in and as constituting part of and serve as the record in Case No. 15,384, and Cause No. 15,500.

/s/ Wayne L. Borah
United States Circuit Judge

Dated:
February 24, 1956

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ORDER CONSOLIDATING 1[illegible], 1[illegible] & 1[illegible] FOR PURPOSES OF ARGUMENT AND SUBMISSION FILED:- June 25, 1956

(Filed Jun 25, 1956, /s/ John A. Feehan, Jr., Clerk)

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

DEEP SOUTH OIL COMPANY OF TEXAS, Petitioner v. FEDERAL POWER COMMISSION, Respondent	}	No. 1[illegible]
HUMBLE OIL & REFINING COMPANY, Petitioner v. FEDERAL POWER COMMISSION, Respondent	}	No. 1[illegible]
SHELL OIL COMPANY, Petitioner v. FEDERAL POWER COMMISSION, Respondent	}	No. 1[illegible]

O R D E R :-

ON CONSIDERATION of the motion of respondent for Order of the Court directing that argument in the above-styled cases be heard on the same day, or before the same panel of the Court at such times as may suit the convenience of the Court, IT IS ORDERED that said motion be, and it is hereby, granted and that the above-styled cases be consolidated for the purposes of argument and submission.

/s/ Wayne L. Borah
U. S. Circuit Judge

June 25, 1956.

ARGUMENT AND SUBMISSION

Extract from the Minutes of
April 8, 1957

HUMBLE OIL & REFINING COMPANY

versus

FEDERAL POWER COMMISSION.

No. 15884

On this day this cause was called, and after argument by Carl Illig, Esq., for petitioner and William L. Ellis, Esq., Attorney, Federal Power Commission, was submitted to the Court.

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IN THE
United States Court of Appeals
FOR THE FIFTH CIRCUIT

No. 15884

HUMBLE OIL & REFINING COMPANY,
Petitioner,

versus

FEDERAL POWER COMMISSION,
Respondent.

Petition for Review of an Order of the Federal Power Commission, sitting at Washington, D. C.

(June 29, 1957.)

Before BORAH, RIVES and BROWN, Circuit Judges.

BORAH, Circuit Judge: This is a companion case to the two cases we have decided today in Numbers 15,849—*Deep South Oil Company of Texas v. Federal Power Commission,* and 15,900—*Shell Oil Company v. Federal Power Commission,* in that petitioner herein has invoked the jurisdiction of this Court under Section 19(b) of the Natural Gas Act to review and set aside the order of the

Federal Power Commission which is the subject also of review in those cases.

Petitioner's basic contentions and the grounds asserted for setting aside the Commission's order are in essence identical to those urged by petitioners in the two companion cases. Consequently, and by reason of the circumstance that the facts in this case present an identity of legal principles with those involved in the *Deep South* and *Shell* cases, *supra*, what we have said in those cases is dispositive of this case. Accordingly, and for the reasons there stated at length, we conclude that the order of the Commission declaring Humble Oil & Refining Company to be a "natural-gas company" within the meaning of the Act, must be and hereby is affirmed.

AFFIRMED.

BROWN, Circuit Judge: I dissent for reasons hereafter to be filed.

JUDGMENT.

Extract from the Minutes of June 29, 1957.

HUMBLE OIL & REFINING COMPANY,

versus

FEDERAL POWER COMMISSION.

No. 15884

This cause came on to be heard on the petition of Humble Oil & Refining Company for a review of an order of the Federal Power Commission issued on September 9, 1955, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the order of the Commission in this cause be, and the same is hereby, affirmed.

"Brown, Circuit Judge, dissenting."

--ooOoo--

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 15849

DEEP SOUTH OIL COMPANY OF TEXAS,
Petitioner,

versus

FEDERAL POWER COMMISSION,
Respondent.

No. 15900

SHELL OIL COMPANY,
Petitioner,

versus

FEDERAL POWER COMMISSION,
Respondent.

No. 15884

HUMBLE OIL & REFINING COMPANY,
Petitioner,

versus

FEDERAL POWER COMMISSION,
Respondent.

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No. 16130

CONTINENTAL OIL COMPANY,
Petitioner,

versus

FEDERAL POWER COMMISSION,
Respondent.

Petitions for Review of Orders of the Federal Power Commission, sitting at Washington, D. C.

(July 30, 1957.)

Before BORAH, RIVES and BROWN, Circuit Judges.

BROWN, Circuit Judge, dissenting: Again, my differences, while substantial are basic and, in this approach, as before, *Magnolia Petroleum Co. v. Federal Power Commission*, 5 Cir., 236 F.2d 785 at 793 to 811, I accept the Court's fair and faithful outline of the cases. Since these cases[1] present the common problem of jurisdiction of the Federal Power Commission over the first sale by an oil-gas-well producer made before production or gathering has ended, I treat them together despite minor variations in factual details.

Likewise, it both simplifies and emphasizes the nature of this problem to concentrate primarily upon the most

[1] In 16,130, Continental Oil Company v. Federal Power Commission, 5 Cir., ... F.2d .... [June 29, 1957], procedural problems arise and are discussed. I am in agreement with the Court's disposition of these, and my differences as to that case relate solely to the basic issue.

[2] Deep South to Texas Gas to Texas Eastern.
Shell to Texas Gas Pipeline to Transcontinental.
Shell to Phillips to El Paso Natural Gas.
Humble to Processors to Pipe Line Companies.

common transaction[2]—the sale of casinghead gas to a processor who in turn sells residue gas to an interstate pipe line.

In this way we come to see what might otherwise be obscured. The problem really is: What did Congress in 1938 mean by the language of Section 1(b).[3] I purposefully emphasize 1938. For the circumstances of the passage of the Natural Gas Act were so unique that, we are told, "* * * *prior* constitutional decisions, not what we have since decided or would decide today, form the measure of the gap which Congress intended to close by this Act. *Illinois Natural Gas Co. v. Central Illinois Public Service Co.*, 314 U.S. 498, 508, 86 L.Ed 371, 377 * * *; and see *Parker v. Motor Boat Sales*, 314 U.S. 244, 250, 86 L.Ed 184, 191 * * *," *Federal Power Commission v. East Ohio Gas Company*, 388 U.S. 464, 472, 94 L.Ed 268, 277.

This refers, of course, to the oft repeated history that Congress legislated to fill the gap created by specific decisions[4] of the Supreme Court. *Panhandle Eastern Pipe Line Co. v. Public Service Commission*, 332 U.S. 507, 517-519, 92 L.Ed 128, 137-139.

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[3] §1(b), 15 USCA 717(b):
"The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption * * * and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas * * * or to the production or gathering of natural gas * * *."

[4] Missouri ex rel Barrett v. Kansas Natural Gas Co., 265 U.S. 298, 310, 68 L.Ed. 1027, 1031; Public Utilities Commission v. Attleboro Steam & Electric Co., 273 U.S. 83, 89, 71 L.Ed. 549, 553; and see Pennsylvania Gas Co. v. Public Service Commission, 252 U.S. 23, 64 L.Ed. 434, subsequently repudiated East Ohio Gas Co. v. Tax Commission, 283 U.S. 465, 73 L.Ed. 1171.

This has at least a dual significance. First, it makes terribly important just what those cases decided, because it was the decisions which created the gap. And second, as 1938 Congressional preoccupation with the gap is the test, the jurisdictional parts of the Act must be viewed through 1938 lenses. With that outlook, can it be said that Congress knowingly set in train the consequences which flow from these decisions?

The first becomes of some importance in the Court's view because, in the final analysis, the conclusion reached in *Deep South* rests upon a Committee report[5] and the decision of *Phillips Petroleum Company v. Wisconsin*, 347 U.S. 672, 98 L.Ed. 1035. The fact is, of course, that neither of the two cases, note 4, *supra*, dealt even remotely with the sale by a producer in an oil field to a processor who in turn sold to an interstate pipe line. In *Attleboro* the utility generated and transported electricity; in *Kansas* the seller to the local distributing company was an integrated producer-transmission pipe line company. So far as *Phillips Petroleum Company v. Wisconsin*, *supra*, which I accept, is concerned, I hardly think that, with the Court's studied traditional refusal to deliver advisory opinions even on matters which it knows are then somewhere in the judicial mill and which will inevitably come through its own grist, the Supreme Court

[5] The *Deep South* opinion states: "The Committee reports on the bill which became the Natural Gas Act specifically stated that 'sales for resale, or so-called wholesale sales in interstate commerce (for example, sales by producing companies to distributing companies) * * * have been considered [by the courts] to be not local in character, and even in the absence of Congressional action not subject to State regulation.'" H.R. Rep. No. 709, 75th Cong., 1st Sess. 1-2; Senate Rep. No. 1162, 75th Cong., 1st Sess. 1-2.

meant to decide that *all* sales of gas which, because of molecular identity, flow ultimately from Texas or Louisiana to New York are sales in interstate commerce.

This is but another way of saying that we face an entirely new case—one never before decided. The crucial issue here is whether the sales are in interstate commerce as meant by §1(b). At the outset in *Phillips* that issue was conceded as "Petitioners admit that Phillips engages in 'the sale in interstate commerce of natural gas for resale,' as, of course, they must. *Interstate Natural Gas Co. v. Federal Power Com.*, 331 U.S. 682, 687-689, 91 L.Ed. 1742, 1746-1748." 347 U.S. 672 at 677, 98 L.Ed. 1035 at 1045. The second issue involved here is whether these sales are made in the course of production or gathering. The similar contention in *Phillips* fell by the Court's rejecting the Commission's finding and the plain holding that "We are of the opinion * * * that the finding is without adequate basis in law, and that production and gathering, in the sense that those terms are used in §1(b), end before the sales by Phillips occur." 347 U.S. 672, 678, 98 L.Ed. 1035, 1045. And certainly *Interstate Natural Gas Company v. Federal Power Commission*, 331 U.S. 682, 91 L.Ed. 1742, so heavily relied on in *Phillips* cannot have remotely decided our case. To Interstate's contention "that the sales to the three pipe line companies are a part of the gathering process and consequently not within the Commission's power of regulation," the court answered positively "By the time the sales are consumated, nothing further in the gathering process remains to be done," 331 U.S. 682 at 692, 91 L.Ed. 1742 at 1749. This case recognizes also that principles of constitutional law and

statutory construction are not equated with laws of physics, so that the inquiry is something more than the schoolboy's quest for molecular identification. Concerning the Congressional purpose to leave production and gathering to the States, the Court stated:

> "It was the intention of Congress to give the States full freedom in these matters. Thus, where sales, though technically consumated in interstate commerce, are made during the course of production and gathering and are so closely connected with the local incidents of that process as to render rate regulation by the Federal Power Commission inconsistent or a substantial interference with the exercise by the State of its regulatory function, the jurisdiction of the Federal Power Commission does not attach * * *," 331 U.S. 682 at 690, 91 L.Ed. 1742 at 1748.

So nothing written so far tells us authoritatively what Congress in 1938 meant to do about sales made prior to completion of production and gathering. Did Congress intend to place this under the control of a remote Federal bureau?

I think the consequences of any such holding are so far-flung and so disturbing to the delicate balance in our system of dual sovereignty that, divining the legislative will as is the judicial function, *United States v. Amercan Trucking Associations*, 310 U.S. 534, 543, 84 L.Ed. 1345, 1350, and whether we look at this through 1938 lenses or 1957 bifocals, I cannot believe that Congress in this innocuous way thought that it was remaking the concept of our political economy.

Since it is the fact of *movement*[6]—continuous and almost irrepressible movement—from the time the gas molecule first begins to stir and is once released from the bowels of the earth until consumed at the Brooklyn burner tip—that is the characteristic which to the Court makes this inevitably interstate, the impact has been dramatically described, *Heisler v. Thomas Colliery Co.*, 260 U.S. 245, 259-260, 67 L.Ed. 237, 243:

> "The reach and consequences of the contention repel its acceptance. If the possibility, or, indeed, certainty, of exportation of a product or article from a state, determines it to be in interstate commerce before the commencement of its movement from the state, it would seem to follow that it is in such commerce from the instant of its growth or production; and in the case of coals, as they lie in the ground. The result would be curious. It would nationalize all industries; it would nationalize and withdraw from state jurisdiction and deliver to Federal commercial control the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts, and the woolen industries of other states at the very inception of their production or growth; that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof,' wool yet unshorn, and coal yet unmined, because they are, in varying percentages, destined for and surely to be exported to states other than those of their production."

[6] The Court's decision of "sale in interstate commerce" is a bootstrap conclusion: it is an interstate sale because of the movement and yet the movement occurs only because of the sale.

Such a holding withdraws from the states a traditional field for effective regulation of an economic activity of major importance to the general welfare of the state. Specifically, such a holding will forbid state regulation of oil and gas production activities insofar as that state policy is aimed at, or works through, the use of minimum prices.

This is no theoretical academic possibility. This is an actual fact of a present doctrine whose applicability is limited only by the ultimate judicial declaration of the earth-ward limits of a jurisdictional sale. As a part of the yet unascertained fallout of the atomic *Phillips* decision, the Court in *Natural Gas Pipeline Company of America v. Panoma Corporation* and *Natural Gas Pipeline Company of America v. Corporation Commission of the State of Oklahoma*, 349 U.S. 44, 99 L.Ed. 866, held that as to sales within the jurisdictional limits of *Phillips*, the State of Oklahoma was forbidden to apply its otherwise constitutional[7] power to prescribe minimum prices for Oklahoma gas sold or delivered. The Court with brief but awesome finality said:

> "In these cases Oklahoma has attempted to fix a minimum price to be paid for natural gas, after its production and gathering has ended, by a company which transports the gas for resale in interstate commerce. We held in Phillips Petroleum Company v. Wisconsin, 347 U.S. 672, 93

[7] Apart from the effect of the Natural Gas Act, the predecessor of this very same state order (identical except as to the price) was upheld in Cities Service Gas Company v. Peerless Oil & Gas Company, 340 U.S. 179, 95 L.Ed. 190, and Phillips Petroleum Company v. State of Oklahoma, 340 U.S. 190, 95 L.Ed. 204. As to these, the Court in Panoma said, "In those cases we were dealing with constitutional questions and not the construction of the Natural Gas Act * * *." 349 U.S. 44 at 45, 99 L.Ed. 866 at 867.

> L.Ed. 1035 * * * that such a sale and transportation cannot be regulated by a state but are subject to the exclusive regulation of the Federal Power Commission. The Phillips case, therefore, controls this one." 349 U.S. 44 at 44-45, 99 L.Ed. 866 at 867.

For these purposes it is of slight comfort to these states that, as *Panoma* plainly said, this was applied to a post-production and gathering sale. For the basis for the decision was the jurisdictional application of the Act. With the inexorable physical characteristic that traces molecules from Permian Basin to Queenstown Heights and joins body, fleece and tail to Mary's ubiquitous fabled lamb, wherever goes F.P.C. jurisdiction, so goes *Panoma*. There it was *after* gathering. Here it is at the wellhead before gathering is completed. The majority's decision takes us that far. Where can the states go? To the well-side of the Christmas tree? To the bottom of the well?

Wherever it is fixed is not far enough, nor may it ever be. For the thesis of the majority's opinion is to mix Boyles and *Phillips* law to come up with the startling legal-statutory interpretation law that because gas, once released is in a constant state of movement, that *movement*, from the very moment it first started, is characterized (intra or interstate) by its final destination. This means that if Oklahoma prescribes the price, as has Kansas[8], as a condition precedent to the right of *with-*

[8] Now pending before the Supreme Court with probably jurisdiction noted, 25 Law Week 3351, as No. 797, is the action of the Supreme Court of Kansas, Cities Service Gas Company v. State Corporation Commission of Kansas, 180 Kan. 454, 304 Pac. 2d 528, sustaining the action of the state regulatory agency in fixing the wellhead price for withdrawal of gas. Also pending are similar Oklahoma minimum price cases, see Phillips Petroleum Company v. Oklahoma Corpora-

drawal of this valuable domestic resource, the sale of that gas *out* of the well—by which alone would there ever be production at all—was of necessity, *in interstate commerce*, and such sale and the movement of the gas occasioned by it would fall under *Panoma*.

Of course, I am not saying that this consequence makes the law invalid or unwise. I assume that Congress could within the broad compass of its constitutional powers over commerce do this very thing. But the fact, so often repeated is that "the Natural Gas Act did not envisage federal regulation of the entire natural-gas field to the limits of constitutional power. Rather it contemplated the exercise of federal power as specified in the Act, particularly in that interstate segment which the states were powerless to regulate because of the Commerce Clause of the Federal Constitution. The jurisdiction of the Federal Power Commission was to complement that of the state regulatory bodies. Accordingly, Congress in §1(b) of the Act not only prescribed the intended reach of the Commission's power, but also specified the areas into which this power was not to extend," *Federal Power Commission v. Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 at 502-503, 93 L.Ed. 1449 at 1504.

Avowedly using only a portion of its power, is it likely then that Congress meant to go this far? To think so is to attribute to them a collective ignorance of an already well-defined traditional policy in the states to regulate[9],

tion Commission, Nos. 953-955, 25 L.W. 3346; Michigan Wisconsin Pipe Line Company v. Corporation Commission of State of Oklahoma, No. 809, 25 Law Week 3271.

[9] As shown by both pre and post-1938 decisions, these state efforts had met with Federal constitutional approval: Champlin Refining Co. v. Corporation Commission, 286 U.S. 210, 76 L.Ed. 1062 (1932); Railroad Commission v. Rowan & Nichols Oil Co., 310 U.S. 573, 84 L.Ed. 1368 (1940); and see, Nebbia v. New York, 291 U.S. 502, 78 L.Ed. 940 (1934).

by regulating the price at which oil or gas could be sold, this important business. Indeed, so well recognized was such state policy that, in the setting of those days, it led to the passage of the Connally Hot Oil Act,[10] 15 USCA 715 et seq. This Act gears interstate transportation of oil to state regulation. And at least everyone on the outside of a courtroom knows that modern oil-gas conservation programs, preventing waste by limiting production to meet an established market demand,[11] whether they do so directly or indirectly, actually fix prices. And there need be no apology for this. For the welfare of a state whose economy rests substantially on oil and gas has a vital interest in local legislative or governmental means of stabilizing such a business. "That a legitimate local interest is at stake * * * is clear. A state is justifiably concerned with preventing rapid and uneconomic dissipation of one of its chief natural resources," *Cities Service Gas Co. v. Peerless Oil & Gas Co.*, 340 U.S. 179 at 187, 95 L.Ed. 190 at 202.

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[10] The Act had its origin in the Executive Orders promulgated July 11, 1933 and July 14, 1933, under the National Industrial Recovery Act, 48 Stat. 200, chap. 90, 15 USCA 710(a), and stricken down in the celebrated case of Panama Refining Company v. Ryan, 293 U.S. 388, 79 L.Ed. 446; see United States v. Gilliland, 312 U.S. 86, 94, 85 L.Ed. 598, 604. "The purpose of the Connally Act * * * is to aid the states in enforcing laws limiting the amount of oil permitted to be produced from wells in designated fields, by prohibiting shipment of excess oil produced * * * in interstate commerce * * *." The President of the United States v. Skeen, 5 Cir., 118 F.2d 58, 59.

[11] That this takes collective action of the interested oil-gas producing states is reflected by Congressional approval of the creation and activities of the Interstate Oil and Gas Compact, see Interstate Compact to Conserve Oil and Gas, Aug. 27, 1935, c. 781, 49 Stat. 939. Extensions Aug. 10, 1937, c. 572, 50 Stat. 617; July 20, 1939, c. 337, 53 Stat. 1071; August 21, 1941, c. 400, 55 Stat. 666; July 7, 1943, c. 494, 57 Stat. 383; Interstate Oil and Gas Compact Joint Resolution, Aug. 28, 1951, c. 350, 65 Stat. 199.

Ten cent oil in the early thirties produced, in East Texas as elsewhere, calamity.[12] With this history so fresh in its recollection, indeed, with like contemporary problems so much then a matter for its current consideration, it is beyond my belief to think that Congress thought that, by the innocuous language of §1(b), it was letting loose a nascent force which either could, or would, or might completely alter a major business or thwart a major field of state regulation.

Chief Justice Vinson, recognizing in *Interstate Natural Gas Company v. Federal Power Commission*, 331 U.S. 682 at 690, 91 L.Ed. 1742, 1748, *supra*, that some sales "technically consummated in interstate commerce * * * are so closely connected with * * * local incidents * * * as to render rate regulation by the Federal Power Commission inconsistent or a substantial interference with the exercise by the State of its regulatory function, [and] the jurisdiction of the Federal Power Commission does not attach," showed great prescience.

Especially so, if, for example, the current holding and contention of the Federal Power Commission is followed[13] that the price for which independent producers may sell their gas to a pipe line is controlled by *City of Detroit v. Federal Power Commission*, D.C.Cir., 230 F.2d 810, cert. den. 352 U.S. 829, 1 L.Ed.2d 48. That case, with its emphasis on cost data as a part of a so-called rate base, points

[12] It led to what the Governor of Texas considered insurrection requiring declaration of martial law as recently enacted conservation laws were enjoined by Federal Courts. Sterling v. Constantin, 287 U.S. 378, 77 L.Ed. 375.

[13] We now have nine such cases pending on petition for review from the Federal Power Commission.

out that if a "fair-field" price is to be justified, it can be so only when it does not produce more than reasonably necessary to permit continued exploration for and development of gas reserves. That, in the light of the oft-repeated statement that "Protection of consumers against exploitation at the hands of natural-gas companies was the primary aim of the Natural Gas Act," *Phillips Petroleum Company v. Wisconsin*, 347 U.S. 672, 685, 98 L.Ed. 1035 at 1049, may mean that it is the positive duty of the Federal Power Commission aggressively to demand and then approve only the *lowest* rate. But the rate which is most favorable to consumers in Brooklyn, i.e., the *lowest* possible one, may run counter to, and could frustrate altogether, the domestic policy of Oklahoma,[14] or Kansas, or Texas, or New Mexico.

Again, I repeat, Congress could surely make the one subject to the other. But the question remains: where do we find a declaration of any such far-reaching purpose?

The holding of a jurisdictional sale at the wellhead does more than prohibit, and thus invade, state regulation. It

[14] In Cities Service Gas Co. v. Peerless, supra, at 340 U.S. 183, 95 L.Ed. 200, the Court pointed out that the Oklahoma "* * * Commission concluded that there was no competitive market for gas in the Guymon-Hugoton Field, that the integrated well and pipe-line owners were able to dictate the prices paid to producers without pipe-line outlets, and that as a result gas was being taken from the field at a price below its economic value. It further concluded that the taking of gas at the prevailing prices resulted in both economic and physical waste of gas * * *."

If long-line transmission pipe-lines by mere location and availability have that monopolistic power to drive down prices, what will their power be when, acquiring as a new and somewhat unusual ally, the Federal Power Commission, the two move jointly together to drive prices down further in the name of consumer public interest? What does Oklahoma do in the meantime? What happens to its landowner royalty owners, its oil companies, its banks, its public treasury?

affirmatively imposed substantial obligations of the most awesome kind which, although appropriate to utility regulation and within the conceded constitutional power of Congress, could hardly have been anticipated by Congress for application to a person engaged in the local activity of drilling and bringing in an oil or gas well. Here, we see that we cannot brush this aside, as does the majority as mere pessimsitic hyphothetical prophesies.[15] Holding, as mere pessimistic hypothetical prophesies.[15] Holding, itself sets in train a whole series of requirements which makes it plain that when the wildcater spudded in, he may have thought himself a free enterpriser in the American tradition, but when the well comes in and the gas is sold to a person who sells it to another who sells it to a pipe line who transports it to a distributing company who sells it to a homeowner, he has become a public utility.

For the Court to say "no such issues are presented in the instant case, and it will be time enough to pass upon those issues if and when they are properly presented" is to forget so soon what we struggled with a year ago in *Magnolia Petroleum Company v. Federal Power Commission*, 5 Cir., 236 F.2d 785, cert. den. 352 U.S. 968, 1 L.Ed.

[15] In *Deep South*, the Court says: "Petitioner argues, however, that what is involved here is 'more than merely regulation of sales,' for the reason that our decision herein will give rise to certain hypothetical situations predicated upon assumed future actions by the Commission, *viz.*, that should certificates of public convenience and necessity which petitioner will apply for be refused, Deep South must close its wells and suspend operations, and that petitioner must obtain the Commission's permission before discontinuing sales from a well which has been found subject to Federal jurisdiction. No such issues are presented in the instant case, and it will be time enough to pass upon those issues if and when they are properly presented."

2d 322, and the related cases where the series 174, 174A, 174B Order[16] cases were under review. Not here concerned with the validity of those regulations and accepting them for what they state, these regulations with their injunctive and criminal sanctions under Sections 20, 21(a), 15 USCA §717s, §717t(a), compel definitive action. They compel it now. Noncompliance subjects the independent producer to penalties now. Under Section 157.23(a) the Order requires an application for certificate of public convenience and necessity and, once obtained with service performed, Section 157.28 forbids abandonment of any sale or service without the express permission and approval of the Commission, *J. M. Huber Corporation v. Federal Power Commission*, 3 Cir., 236 F.2d 550, cert. den. 352 U.S. 971, 1 L.Ed. 2d 324.

For an industry which has been built upon the inveterate, irrepressible, sometimes flamboyant, optimism of people anxious to take great risks to reap great rewards, suddenly to make out of it the staid and conservative business of a public uility, represents such a radical abandonment of the past that I cannot believe that Congress meant to do this to the thousands who annually bring, or try to bring, or hope to bring, in gas and oil wells. Especially is this so since the making of the very first sale which allows a molecule to make an interstate journey subjects that operator permanently to the jurisdiction of a remote agency until he can prove himself entitled to be freed. Even more so since those very same Orders prescribe that he cannot make any changes in the price which he

[16] See my dissent, Magnolia Petroleum Company v. Federal Power Commission, 236 F.2d 785 at 793, especially Part I, page 797 through 808, which sets forth these regulations and describes their operation in detail.

is willing to sell his gas without first filing, as required under Section 154.92(a), a rate schedule and proving his right to it. And that very same Order, Section 154.94, as does the consistent administrative practice of the Commission, forbids either the use or application of automatic contract step-up rate escalation clauses. The operation of these Orders in the context of the Act under Section 4 and 5, 15 USCA 717c, 717d, exposes the operator to the possibility of an irretrievable loss by suspension for the maximum period of five months, *Humble Oil & Refining Company v. Federal Power Commission*, 5 Cir., 244 F.2d 315 [7 cases]; *Sun Oil Company v. Federal Power Commission*, 5 Cir., 244 F.2d 77. They subject the operator to the burden of proving as just and reasonable any proposed increase. And they expose him all the time to the likelihood that under Section 5 the Commission may determine that what he and his purchaser have agreed to, either in initial rates or those subsequently filed and approved, now produces an unjust and unreasonable rate which can no longer be collected.

I would think that when the Congress sets out radically to change a local free enterprise business[17] to that of a regulated utility, it would do so in unmistakable terms. I would think that it would not only say so, but prescribe as well adequate machinery[18] for the fulfillment of such

[17] As of December 31, 1954, there were 511,200 producing wells. During 1954, in addition to 29,773 oil wells and 19,169 dry holes, 3,977 gas wells were brought in. Statistical Abstract of the United States 1956 page 741.

[18] To those of us dealing with these cases since the *Phillips* decision, the effort of the Commission and its overburdened staff to assimilate and handle the thousands of applications for certificates of public convenience and necessity, for rate increases, etc., can evoke only the most sympathic appreciation for a problem for which it was not equipped by Congress.

an undertaking. I would have thought that such a spectacular purpose would be soon evident and would not take eighteen years to discern.

In this analysis I have concentrated upon the searching out of Congressional intent. In that process, I think the

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In October 1954 there were some 2,100 rate filings with 9,702 being received in January 1955.

Of more fundamental significance than the Congressional omission of the working tools (an adequate staff and budget) is the complete failure to prescribe the tools of substance, i.e., the standards to be applied for utility rate making in this field. The Commission immediately recognized this by its Order instituting Docket R-142 under the revealing Heading of "Consideration of principles and Methods to be Applied in the Fixing of Rates to be Charged by Independent Producers for Natural Gas Sold in Interstate Commerce for Resale" which stated:

> "2. Necessary to a determination of the rates permitted by the Natural Gas Act to be made, demanded or received by a natural-gas company is the choice of methods to be used in determining the just and reasonable rate for any particular sale. The Commission, recognizing the basic differences between the operations of a producer and those of a pipe-line company, is desirous of securing any information, suggestions or proposals bearing upon the possible effect the several approaches might have upon the public interests towards which the Natural Gas Act is directed.
>
> "3. The Commission, therefore, is inviting the submission of suggestions as to the principles and methods to be applied by it in its regulation of the rates to be charged by independent producers for the transportation or sale of natural gas subject to the jurisdiction of the Commission. * * *
>
> "4. This is a matter of national importance and the Commission invites members of the industry, producers, gatherers, interstate pipe-line companies, distributors, consumers, groups and associations representative thereof, State commissions, municipalities, and any other interested persons to submit information, data, views, comments or suggestions in writing concerning the problem. * * *"

But the hearing could hardly supply what the statute omitted, so it was not surprising that after hearings in R-142 scheduled in December 1954 and held at various times in 1955, the Commission by order December 1, 1955, terminated R-142 with this significant finding:

"* * * the information gained in this proceeding convinces us that, on the basis of the record herein, we should

so-called specific exemption of production and gathering is to be read as a part of §1(b) and not treated as though it stood alone. In that process, also, there are other aids advanced by the parties which point significantly in this direction.

At the outset it is significant that this is an "*in* interstate" commerce Act not one "*affecting*"[19] interstate commerce. The test then is not how much Congress covered, but rather how much of a field which it deliberately limited did it intend to cover. *Federal Trade Commission v. Bunte Bros. Inc.*, 312 U.S. 349, 85 L.Ed. 881. The legislative history[20] indicates that the "in in-

not lay down any rules as to what would be necessary or appropriate for consideration in determining the just and reasonable rates of any independent producer subject to our jurisdiction under the Natural Gas Act.

"Accordingly, after full consideration of the suggestions, comments, and recommendations submitted, it appears to the Commission that adoption of any standards, principles, or methods respecting the matters and issues involved herein is not appropriate or necessary in carrying out the provisions of the Natural Gas Act. We so find."

[19] Cf. for example other regulatory statutes passed prior to or contemporaneously with the Natural Gas Act: The Fair Labor Standards Act of 1938 (Act of June 25, 1938, 52 Stat. 1060, 29 USCA 201, 206), extended Federal regulation to conditions of employment "in the production of goods for commerce." The Bituminous Coal Act of 1937 (Act of April 26, 1937, 50 Stat. 72) applied Federal authority to matters directly "affecting" interstate commerce. The National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 USCA 141), imposed regulation upon matters "affecting" interstate commerce.

[20] One of Petitioner's briefs concisely traces this history:

As originally introduced, the bill which became the Natural Gas Act defined the scope of the Commission's jurisdiction in these words [H.R. 4008, 75th Cong., 1st sess. (1937)]:

> "The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale of *such* natural gas for resale to the public, and to natural-gas companies engaged in such transportation or sale * * *" (emphasis supplied).

terstate" commerce standard was articulately adopted to determine what "sales" were covered.

And since "commerce among the states is not a technical legal conception, but a practical one, drawn from the course of business," *Swift & Company v. United States*, 196 U.S. 375, 398, 49 L.Ed. 518, 525, and "We must accordingly mark the beginning and end of a particular kind of interstate commerce by its own practical consideration," *United States v. Yellow Cab Company*, 332 U.S. 218, 231, 91 L.Ed. 2010, 2020, the test cannot be the simple one of the physical property of gas which keeps it in constant movement from the bottom of the well to the burner tip. "'Practical continuity' does not always make an act a part of interstate commerce," *Southern Pacific Co. v. Gallagher*, 306 U.S. 167 at 177, 83 L.Ed. 586 at 593. This is so since with casinghead gas the sales precede local processing which is essential to

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Similarly, §2(5) of the original version of the bill contained this definition of "natural-gas company":

> "'Natural-gas company' means a person engaged in the transportation of natural gas in interstate commerce, or the sale of *such* gas for resale to the public" (emphasis supplied).

During hearings, objection was raised to the failure of the bill to "confine jurisdiction to gas sold in interstate commerce." [Hearings before the House Committee on Interstate and Foreign Commerce on H.R. 4008, 75th Cong., 1st sess., pp. 103-105 (1937)] The objecting witness, Mr. Russell G. Hunt, then offered the following amendment to §2(5):

> "'Natural-gas company' means a person engaged in * * * the sale in interstate commerce of such gas for resale to the public."

Without material change, this amended definition, together with a corresponding change in §1(b), appeared in the bill as favorably reported out by the House Committee, [H.R. 6586 (1937) and H. Rept. No. 709, 75th Cong., 1st sess. (1937)] and in the same form in the Act as passed.

See also Federal Power Commission v. Panhandle Eastern Pipe Line Company, 337 U.S. 498, 512, 513, footnote 16, 93 L.Ed. 1499 at 1509.

extract the valuable economic components of it and to prepare the gas for its interstate transmission and use as fuel. The processing itself is a local or intrastate activity and can hardly be regarded as being "in" interstate commerce.[21] That the commodity almost certainly, or even inevitably, will be shipped out of the state does not make all of the activity interstate commerce even though it is done in the course of a part of that movement.[22]

In my approach to this matter, I treat these, and the contrary ones urged by the Commission,[23] as aids only. Dealing, as they do, with logs, iron ore, cotton, and the like, they hardly fit the fugitive expansive nature of gas. And, I do not attempt here to assert or explore their final, legal, decisive significance since they may be of "* * * that class of cases [in which] the question is not with respect to the extent of the power of Con-

[21] See Crescent Cotton Oil Company v. Mississippi, 257 U.S. 129, 66 L.Ed. 166; Parker v. Brown, 317 U.S. 341, 360-361, 87 L.Ed. 315, 331; Federal Compress & Warehouse Company v. McLean, 291 U.S. 17, 78 L.Ed. 622; Chassaniol v. Greenwood, 291 U.S. 584, 78 L.Ed. 1004.

[22] See Coe v. Errol, 116 U.S. 517, 525, 29 L.Ed. 715, 718; Superior Oil Co. v. Mississippi, 280 U.S. 390, 74 L.Ed. 504; Empresa Siderurgica S.A. v. County of Merced, 337 U.S. 154, 157, 93 L.Ed. 1276, 1280; Department of Treasury of Indiana v. Wood Preserving Corporation, 313 U.S. 62, 85 L.Ed. 1188; Southern Pacific Co. v. Gallagher, 306 U.S. 167, 83 L.Ed. 586; Atlantic Coast Line Railroad Co. v. Standard Oil Company, 275 U.S. 257, 72 L.Ed. 271; Oliver Iron Mining Company v. Lord, 262 U.S. 172, 67 L.Ed. 929; Utah Power & Light Company v. Pfost, 286 U.S. 165, 76 L.Ed. 1038; Arkadelphia Milling Company v. St. Louis S.W.R.Co., 249 U.S. 134, 63 L.Ed. 517; Crescent Cotton Oil Company v. Mississippi, 257 U.S. 129, 66 L.Ed. 166; Heisler v. Thomas Colliery Company, 260 U.S. 245, 259, 260, 67 L.Ed. 237, 243.

[23] See, e.g., Shafer v. Farmers Grain Company, 268 U.S. 189, 69 L.Ed. 909; Lemke v. Farmers Grain Company, 258 U.S. 50, 66 L.Ed. 458; Dahnke-Walker Milling Co. v. Bondurant, 257 U.S. 282, 66 L.Ed. 239.

gress to protect interstate commerce, but whether a particular exercise of state power in view of its nature and operation must be deemed to be in conflict with that paramount authority," *Santa Cruz Fruit Packing Company v. NLRB*, 303 U.S. 453 at 466, 82 L.Ed. 954 at 960. But I do think they offer some relevant assistance in attempting to assay what Congress, familiar generally with legal concepts applied in this field throughout the years, could have had in mind.

But I do think we must recognize that, as in the situation which I analyzed in detail in which the state is deprived of the right to regulate the price of gas, current authoritative decisions also withdraw a substantial part of the gas business and the gas produced from the area of state taxation permitted in so many of these cases cited in notes 22 and 23, *supra*. In *Michigan-Wisconsin Pipe Line Company v. Calvert*, 347 U.S. 157, 98 L.Ed. 583, the Court unanimously held that a Texas tax, applicable on gas at the outlet of an independent gasoline plant as it flows into the lines connecting with an interstate transmission system, violates the Commerce Clause. Of course, on the principle of *Panoma* to the extent that the jurisdictional sales go to the wellhead or beyond, the movement[24] effected by such sales is in interstate

[24] *Calvert* puts it in terms of movement, i.e., transportation "The problem in this case is not whether the State could tax the actual gathering of all gas whether transmitted in interstate commerce or not, cf. Hope Natural Gas Co. v. Hall, 274 US 284, 71 L ed 1049, 47 S Ct 639, supra, but whether here the State has delayed the incidence of the tax beyond the step where production and processing have ceased and transmission in interstate commerce has begun. * * *" Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157 at 166-167, 98 L.Ed. 583 at 592.

If the mechanical-physical movement test is decisive, it is difficult to see why the author and two Associate Justices would so soon dissent in *Phillips*.

commerce and must likewise be removed from state taxation under *Calvert*. This means that at least to some extent tax cases are pertinent and in any event, this points up another consequence of a startling kind not shown to have been within Congressional contemplation.

These problems like the question of whether casinghead is "natural gas" and whether the sale is for "resale" or for a manufacturing process and later resale cannot be determined by artificial, mechanical standards, dictionary definitions or, equally unauthoritative, judge-made definitions of some physical or scientific phenomenon.

The Act carefully limits it to the sales for resale of natural gas. It is uncontradicted that what is sold is *something* other than the fuel gas which ultimately goes into the transmission lines. Presumably the purchasers buy this casinghead gas for *all* of its constituent elements. Indeed, in the case of Shell, the contract between it and Phillips began in 1938. It was not until July 1950 that any part of the residue gas sold by Phillips to El Paso Natural Gas. Until 1950 the residue gas was continuously flared. What did Phillips buy during these twelve years? What did Shell sell during these twelve years? What made it change merely because Phillips found a new use or outlet in 1950? Obviously Phillips bought casinghead gas for the valuable liquefiable hydrocarbons (natural gasoline, butane and propane). These are still a major constituent of what they buy. The same is true in the other cases.

If the purchaser buys the gas for its *multiple* use, does not the producer sell for the same purposes. As to casinghead gas, the sale then is for (1) the extraction of valuable liquefiable hydrocarbons, (2) the removal of all valuable hydrocarbons, (3) the processing to eliminate impurities and (4) the sale of the residue to a pipe line company for resale. Now a sale for all four purposes is not a sale for one. And yet the Act itself defines the jurisdictional sale as "a sale in interstate commerce of natural gas for resale for ultimate public consumption" and then categorically states that the Act "shall not apply to *any other* * * * *sale* of natural gas."

Does not the very difficulty of attempting to define each of these operations as "processing' or "manufacturing" or analogize gas to a dead chicken, frozen or otherwise, *East Texas Motor Freight Lines, Inc. v. Frozen Food Express*, 351 U.S. 49, 52, 54, 100 L.Ed. 917, 922-923, 924, and the uncontradicted fact that the sales had a substantial purpose other than ultimately making fuel gas available for transmission and delivery to consumers, suggest further that sales "in interstate commerce for resale" was meant by Congress to be those effected after such processing was completed? Here, as nearly always, the literal[25] test cannot be applied. For "* * * even when

[25] For example, the gasoline plant extracts the butane and propane from the natural casinghead gas. This is reduced to a liquid state under pressure and is distributed, as it now is widely, to communities not served by pipe lines. This very same propane, butane is then resold for "ultimate public consumption for domestic, commercial, industrial * * *" and other uses. Since, on the Commission's and Court's chemical-legal standards, it is still natural gas as the only change is from a gaseous to a liquid state, and there is no change in molecular structure, is the sale by the gasoline plant a sale of "natural gas for resale"? Is the sale by a statewide distributing company to local distributors such a sale? Like-

the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words," *United States v. American Trucking Associations*, 310 U.S. 534 at 543, 84 L.Ed. 1345 at 1350.

I end as I began: could Congress have intended all of these things? Because I think not, I must respectfully dissent.

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wise, suppose Shell sold the *oil* at the wellhead to a purchaser who in turn had sold the casinghead gas to Phillips, who had in turn sold the residue gas to El Paso. Is that original wellhead sale of the oil, carrying inevitably with it the casinghead gas from which all blessings and jurisdiction flow, a sale of natural gas? If not, why not? And if, as the Court holds, the Commission can establish the price which Texas Gas must pay to Deep South where Deep South's volume is but 5% of Texas Gas requirement and its output moves 95% intrastate and 5% interstate, why cannot the Commission fix the price for each barrel of this gas bearing, gas carrying oil?

[illegible], Clerk of the United States Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from [illegible] to [illegible], next preceding this certificate contain full, true and complete copies of all the pleadings, [illegible] entries and proceedings, including the opinion of the United States Court of Appeals for the Fifth Circuit, in certain cause in said Court, numbered [illegible], wherein [illegible] Refining Company, is petitioner and [illegible] Power Commission, is respondent, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from [illegible] to [illegible] are identical with the printed record upon which said cause was heard and decided in the said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Court of Appeals at my office in the City of New Orleans, Louisiana, in the Fifth Circuit this 1st day of August, A. D., 1957.

[illegible]
Clerk, United States Court of Appeals for the Fifth Circuit.

(SEAL)

By Clara S. James
Chief Deputy Clerk

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Office - Supreme Court, U.S.
FILED
SEP 13 1957
JOHN T. PEY, Clerk

No. 459

UNITED STATES COURT OF APPEALS,

FIFTH CIRCUIT.

I, EDWARD W. WADSWORTH, Clerk of the United States Court of Appeals for the Fifth Circuit, do hereby certify that the annexed Appendix to Brief of Petitioner, was filed in this office by the Petitioner, in re - HUMBLE OIL & REFINING COMPANY, petitioner versus FEDERAL POWER COMMISSION, respondent, No. 15884, and was before the Court upon the hearing and decision of said case.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said United States Court of Appeals, at the City of New Orleans, Louisiana, this 1st day of August, A.D., 1957.

(SEAL)

EDWARD W. WADSWORTH
Clerk, United States Court of Appeals, for the Fifth Circuit.

By /s/ Clara R. James
Chief Deputy Clerk

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

DEEP SOUTH OIL COMPANY OF TEXAS, *Petitioner,* v. FEDERAL POWER COMMISSION, *Respondent.*	No. 15849
HUMBLE OIL & REFINING COMPANY, *Petitioner,* v. FEDERAL POWER COMMISSION, *Respondent.*	No. 15884
SHELL OIL COMPANY, *Petitioner,* v. FEDERAL POWER COMMISSION, *Respondent.*	No. 15900

APPENDIX TO BRIEF OF PETITIONER HUMBLE OIL & REFINING COMPANY

Line 19, Page 371, through Line 6, Page 415:[1]

(Page 371) MR. ILLIG: I would like to call Mr. Ralph J. Schilthuis.

Whereupon,

RALPH J. SCHILTHUIS

called as a witness, having been first duly sworn, was examined and testified as follows:

[1] All references to page numbers above 300 are to the official transcript of testimony and evidentiary exhibits.

DIRECT EXAMINATION

BY MR. ILLIG:

(Page 372) Q Please state your name?

A Ralph J. Schilthuis.

Q And where do you live, Mr. Schilthuis?

A Houston, Texas.

Q What is your profession?

A I am a petroleum engineer by profession.

Q What is your educational background?

A I graduated from the Colorado School of Mines in 1930, as petroleum engineer.

Q By whom are you employed, and in what capacity?

A Humble Oil & Refining Company as Superintendent of its Gas Division.

Q How long have you been with Humble?

A Since 1930.

Q Briefly describe the various positions you have held with Humble since 1930?

A I went to work for Humble in July 1930, at its Bay Town Refinery, and served there in student training, as laboratory technician, and in technical service work, until June of 1931. Thereafter until the year 1937 in the production research division of the company in Houston, where I had work in connection with all phases of production operations, including the development and operation of petroleum reservoirs, and all other field operations.

During that time I went through the various phases of the work and ended up as Assistant Director of Production (Page 373) Research.

In 1937, I left the Production Research work and went into the statistics and economics group of the executive department, where I served for about two years, until 1939, and then went into further work in the petroleum

engineering, supervisory work in petroleum engineering engaged in all phases of production operations including regulatory work before the State Commissions as well as engineering work in connection with oil reservoir development and operation, and field operations, and in 1941 left that work to come to Washington to serve as Assistant Director of Production for the then, I believe, Office of Petroleum Coordinator for National Defense, which later became, finally, the Petroleum Administration for War.

There I served in that capacity until I believe it was August 1945 when I returned to the company and was stationed at Corpus Christi as Division Petroleum Engineer for the so-called southwest Texas Division of the Production Department of the company, in which position I had charge of all of the field engineering operations as well as some of the operations, per se.

I served in that capacity until August, 1946, when I was made Assistant Superintendent of the Gas Division in Charge of Humble's — all Humble's Gas Operations. I served in the latter capacity until 1953, when I was made Superintendent of (Page 374) the Gas Division and am now occupying such position.

Q In your war-time position with PAW, and its predecessor agency, you had occasion to prepare and administrate, did you not, Government orders dealing with the production of oil and gas?

A And the development of oil and gas fields, yes.

Q And one of those orders is referred to as Petroleum Administrative Order 11, is it not?

A Yes.

Q And in your work with Humble Oil and Refining Company, you have had the other experience of dealing with State and Federal Regulatory Agencies, have you not?

A Yes, sir.

Q In the course of your work for Humble, have you come to be acquainted with the production and processing of casinghead gas?

A I have.

Q Are you also acquainted with the contracts, or contractual instruments under which casinghead gas is sold?

A Yes, I have general knowledge of the contracts.

Q Would you please describe the substance known in the industry as casinghead gas?

A Casinghead gas is gas produced with oil from oil wells, the gas coming from the same reservoir from which the oil is produced, and it may also include gas which has been (Page 375) introduced into the oil wells or into the oil reservoir for the purpose of assisting in producing the oil from the reservoir up the well to the surface, or increasing the recovery of oil from the reservoir.

Q Does casinghead gas contain other substances or materials other than hydrocarbons?

A Yes, it contains certain impurities, and foreign substances, among which the impurities may be drilling mud, rust, sand, dirt.

Q Does the casinghead gas at times contain quantities of hydrogen sulphide?

A Yes, and carbon dioxide, and may contain carbon dioxide, nitrogen, helium, water vapor, free water.

Q Now, would you briefly describe the nature of the occurrence of casinghead gas from a reservoir, and the means by which it is produced?

A Casinghead gas may exist in the reservoir either dissolved in the oil with which it is produced, or as a gas cap overlying the oil, or as bubbles of gas within the oil in the reservoir. I might mention, I forgot to mention as one of the impurities of natural gas, various sulphur compounds.

Q - Is casinghead gas the means or force by which the oil is propelled to the mouth of the wells?

A Yes, it is moved through the reservoir, as well as being assisted up the well bore to the surface by the (Page 376) casinghead gas.

Q Now, upon reaching the wellhead, is this substance that we call casinghead gas considered fit for use as an industrial or domestic fuel?

A In some cases it may be used directly for fuel or lease purposes in the local area, but if it is to be compressed, or transported any distance in high pressure lines, and used in remote areas, it must be treated to remove the objectionable foreign material and impurities, as Mr. Wade mentioned, to make the gas safe and usable, and also to make it possible to move the gas to the point of consumption.

Also, there are constituents in the gas that are valuable, as such, and it is desirable to remove them for their value.

Q What are these constituents which it is desirable to remove for their value?

A The compounds such as ethane, propane, butanes, pentane, and the heavier components or compounds that comprise natural gasoline, or even heavier materials.

Q What is the principal constituent of natural gas which is used as a domestic or industrial fuel?

A Methane.

Q These other components in general must be separated from the methane before the casinghead gas is usable for industrial or domestic purposes?

(Page 377) A Yes, the heavier components must be removed, as well as the foreign materials and the impurities must be reduced to tolerable limits.

Q Now, upon being brought to the surface, what disposition is usually made of casinghead gas?

A Well, in some cases, the casinghead gas may be produced in such remote areas, and in such small quantities that there may be no economic use to which it can be put, other than for fuel and power in the field to permit of the field operations, and in that case, any excess gas above the requirements for field operations may be flared, or burned in the field.

If that is the case, it is necessary to burn the gas, ordinarily, as produced and as separated from the oil, in order to avoid explosions, and uncontrolled fire and danger to life, limb and property, therefrom.

In other cases where the casinghead gas is produced in sufficient quantities, and in localities where a market exists, or can be attracted to the locale of the gas production, it may be gathered from the points where it is separated from the oil and some of the impurities, and may be gathered to a casinghead gas gathering plant, if it has sufficient richness to justify processing to remove the desirable hydrocarbon constituents that were previously mentioned, and the gas after processing and after removal of (Page 378) objectionable impurities, and foreign material, may then attract a market and may be delivered to either local markets or may pass into gathering lines that take the gas to the main lines of gas transmission companies or may be delivered through other lines to local markets, or a part of the residue gas from the plant that remains may then be returned to the leases to be used for fuel and power on the leases.

Q In some cases, is it not true that casinghead gas is returned to the reservoir?

A Yes, some of the gas may be returned in addition to uses for fuel and power on the lease, may be injected into the reservoir or into the wells to assist in lifting the oil from the ground, or from the wells, or increasing the oil

recovery from the oil reservoir, or if there is no market from the tail gate of the plant it may be necessary to flare the gas at times, until a market can be attracted.

Q At this time I would like to hand you Humble's Exhibits No. 23 and No. 24. Were these two exhibits prepared under your direction, Mr. Schilthuis?

A Yes.

Q Turning to Humble's Exhibit No. 23, which is marked "Casinghead Gas Processing Plant and Lease Gathering and Residue System," would you please start with the beginning of the operations shown there, which I believe are at the left-hand corner of the box at the left, marked "Typical (Page 379) Lease", and take us from the well to the casinghead plant?

A The gas, referring to the inset entitled "Typical Lease," flows from the dots, which indicate oil wells, the casinghead gas moves with the oil through flow lines to a central point either on the lease in question, or on an adjoining lease, to a location where the lease stock tanks, or tank battery and separators, and other equipment are located, which are provided to separate the oil from the casinghead gas, and also to receive the oil from the separator which passes to a stock tank where the oil is temporarily stored.

The gas moves out of the upper part of the separator, is separated from the oil in that vessel, and then may pass on through a meter, which is shown on the original drawing — or could be seen on the original drawing before it was reduced — which is indicated by the green line, and passes through a meter where it is measured for purposes of keeping track of the quantity of gas that is produced from the various wells, and I might say here there may be a battery of separators, as well as a battery of tanks at this location that would take the gas from either one well, or

one or more wells, through one of the separators, and the remainder of the portions of oil and gas from other wells.

The gas may then be taken, after metering through a line which we call a flare line, not shown on this exhibit, simply because we didn't want to confuse the drawing to a (Page 380) flare, or burning pit where, if the gas can't pass to another outlet, for one reason or another, it may be burned in the burning pit, or at the flare on the lease.

If there happens to be a casinghead gas processing plant in the field, as is depicted upon this general drawing here, the gas may be sold at or near the outlet of the separator, to the operator of the casinghead gas processing plant, and pass through his meter, and thence through the casinghead gas plant gathering system, which is depicted in the solid green on this Exhibit No. 23, and pass through those —

Q Just a second, the casinghead gas gathering system is both red and green, is it not?

A I am sorry, it is depicted as the dashed line, the green and red dashed line to indicate the raw casinghead gas after it is separated from the oil then passes through the lines designated as alternate red and green, which are the gathering lines of the casinghead gas processing plant, and is taken to the plant where it may be processed for removal of some of the heavier hydrocarbon constituents, and may be further processed to remove impurities such as sulphur compounds, or water vapor, which has not been separated as free water in the separator.

The oil that issued out of the lower part of the separator would ordinarily carry with it the free water, which has condensed out of the gas at that point, and the water (Page 381) would be drawn off out of the bottom of the stock tank shown on this inset drawing here, and the free water so separated out with the oil would be drawn off

and possibly taken to a pit, the same pit where the surplus gas, if it has no other outlet, may be burned, and thence it may be taken from the pit — if it is necessary to dispose of large quantities — through lines and injected into abandoned wells, or wells drilled for the purpose of returning the water to the formation from which it is produced to assist in maintaining the reservoir pressure, and increasing the oil recovery, or, in other cases where that is not necessary, it may be injected into wells and into certain formations below the surface that would tolerate the disposal of the salt water.

Q The solid green lines on this drawing indicate what?

A They depict the residue gas lines from the plant by which the plant returns a part or all of the residue gas in some cases after processing in the plant back to the various leases that are delivering gas near the outlet of the various separators on the various leases to the plant for purposes of supplying the leases with gas for fuel and power, or for injection into the wells for assisting in lifting the oil to the surface through the wells, or injection into the oil reservoir in order to increase the oil recovery.

Q Now, the other lines shown at the upper left, (Page 382) the center, upper right and lower center, they merely show additional lease conections, do they not?

A Yes, they indicate connections to other leases such as shown in the typical lease, of both the plant casinghead gas gathering system, as well as the return residue gas lines.

Q Now, the dotted line marked "Gas Transmission Company gathering line" serves what function?

A Well, in this case it is assumed that the gas may be delivered from the plant into a gathering line of a gas transmission company, which may carry the gas to the point of intersection of the pipe line company's gathering system and its main transmission pipe line.

Q Turning now to Exhibit No. 24, which is entitled "Casinghead Gas Processing Plant," I will ask you to start at the lower left-hand corner with the entry of what is designated "Raw Casinghead Gas from the Field," and take us briefly through the processes which go on in this sort of typical plant?

A At the lower left-hand corner depicted in the dashed red and green line, is the terminus of the plant casinghead gas gathering system, which gathers the gas from the various leases, and moves it to the plant. At that point you will notice that there is a plant inlet meter, through which all of the gas moved into the plant from possibly (Page 383) all of the leases, or from a certain number of leases — there may be more than one line coming into the plant from various directions, from various leases into the plant, but this depicts a typical inlet meter where the gas is measured, or a part of the gas is measured into the plant.

I am speaking of the raw casinghead gas, as taken by the plant gathering system from the leases.

The gas passes into a scrubber, where any liquids which have condensed out of the gas, out of the casinghead gas during the course of its movement from the lease separators to this point, may have formed, and may be condensation of certain of the light hydrocarbon liquids that has occurred by virtue of changes in temperature and pressure up to this point of entry into the scrubber, or may also be condensation of additional water, so that it exists in free water form.

There may be quantities of oil which may have spilled over from the separator and moved along with the casinghead gas through the casinghead gas gathering system into the plant and into the scrubber, as shown here, all of which fluids would be trapped by the scrubber, and the fluids

would be disposed of, the water would be sent to a pit or disposed of in other ways.

The light hydrocarbon liquids would be drawn off, and though not shown here, would be passed into other facilities in the plant where it would be recovered along with other (Page 384) products which will be discussed in a moment.

PRESIDING EXAMINER: It appears it may take the witness some little time to go through this explanation.

I wonder if there would be any objection to interrupting for the noon recess?

MR. ILLIG: No objection, Mr. Examiner.

PRESIDING EXAMINER: Very well.

The hearing is recessed, to reconvene at two o'clock.

(Whereupon, at 12:30 o'clock p.m., the hearing was recessed, to reconvene at 2:00 o'clock p.m., the same day.)

(Page 385) AFTERNOON SESSION 2:00 p.m.

PRESIDING EXAMINER: Please come to order.

The witness will resume the stand, please.

Whereupon,

RALPH J. SCHILTHUIS

resumed the witness stand, and having been previously duly sworn, was examined and testified further as follows:

FURTHER DIRECT EXAMINATION

BY MR. ILLIG:

Q Mr. Schilthuis, will you continue with your explanation of Exhibit No. 24? I believe you had taken us up to the scrubber?

A I believe we had disposed of the liquid materials and other materials that might be recovered in the lower part of the scrubber. The raw casinghead gas, after removal of such materials, passes out the top of the scrubber, and

in the usual casinghead gas processing plant then passes through a set of compressors that increase the pressure of the gas from whatever pressure at which it enters the plant system — which may be anywhere from a pressure less than zero, on up to as much as a hundred pounds, as a usual case — and thence, after compression, having been boosted to pressures in the range of possibly 800 pounds per square inch, or maybe even a thousand pounds per square inch, the raw casinghead gas (Page 386) would enter into the side of an absorber, and usually at the lower part, and in that absorber it would pass upward, countercurrent to absorption oil, which has the properties similar to kerosene, or a light gas oil, and which serves as the medium by which the liquefiable constituents in the raw casinghead gas, that is the liquefiable hydrocarbon constituents are absorbed from the raw gas, and then the stripped gas, casinghead gas, passes out the top of the absorber as residue gas, residue of the casinghead gas, and the residue gas may find its way to a number of places, in the one case back through the field or lease fuel system which is indicated on the chart as the second green line, near the center and top of the chart, and which is depicted as the same green line on Exhibit No. 23, showing the field residue gas lines going back to the various leases to carry the gas to the leases for fuel and power, and the other purposes previously mentioned, or the residue gas may proceed, if there is any available, to enter into other equipment that would prepare the gas further for markets, if such preparation is necessary.

If the gas is to go into some local market, it may not be necessary to treat the gas further. It may be sufficiently free of impurities, and may have such a small quantity of water vapor still remaining in it that it could be delivered to a nearby market without further treatment.

If, however, it is to go any distance at all, or in an (Page 387) area where the temperatures are suffiiently low that hydrates would be formed as a result of the content of water vapor with the hydrocarbons that are contained in the residue gas, it would then be necessary, in almost every case, to dehydrate the gas before it travels into either a gathering line, which took it a long distance to a main line of a transmission company where the transmission line delivered the gas to local intrastate markets, or where it took the gas on into markets in other states or areas.

If the residue gas had other impurities, they might be removed at that point, or the impurities might be removed from the raw casinghead gas before it was passed through the absorber.

A portion of the residue gas, as indicated here, might be used as fuel, if there are not sufficient other sources of what might be determined flash gases from the rest of the process to meet the fuel needs of the plant. In any event, usually the gas that is surplus is metered, simply so that proper accounting for the gas can be made, regardless of what use it may be put to. Even if the gas has no market and is flared at the tail gate of the plant, the gas being passed to some flare or burning pit, either in the plant yard or adjacent to the plant, the gas normally would be metered in order to make a proper accounting of the gas, of the disposition of the gas, for regulation purposes and other (Page 388) accounting and statistical records.

The absorption oil which has passed counter current to the raw casinghead gas, as it flows downward through the absorber, comes out at the bottom of the absorber, and that is indicated by the dashed blue, red and green lines, as indicated by the legend, which is to indicate that the liquefiable constituents are contained in the absorber oil, which

is indicated by the green part of the line, and that there may be a small concentration of gas, itself, carried with those hydrocarbons, which is indicated by the red part of the dashed line, and the blue, of course, depicts the absorption oil, itself.

That mixture of materials thence passes on into a still, where the temperature of the enriched absorber oil is raised, and the constituents, the hydrocarbon constituents that have been absorbed in the absorber oil are driven off by heat, and pass out the top of the still, and that is indicated by the dashed red and green line.

What small quantity of gas may have been absorbed or carried over, as well as the liquids which were absorbed, having been driven off and out of the absorber oil pass over it and on into the de-ethanizer, or into a fractionating tower, which is termed a de-ethanizer.

Leaving that for the moment, the absorption oil, from which the hydrocarbon materials absorbed have been driven off (Page 389) by heat, comes out the lower part of the still, and is ordinarily cooled and then pumped back into the absorber to complete the cycle, and proceed to go through the whole cycle again.

In the de-ethanizer, the quantities, small quantities of methane and gas, itself, are driven off, and also the ethane is fractionated off or distilled off, and the remaining liquids, which entail propane and the heavier hydrocarbons — butanes, pentane, and other constituents that make up natural gasoline and possibly some heavier hydrocarbons — then pass out the bottom of the de-ethanizer into another fractionater, which is normally termed a de-propanizer, and there the operation is similar to that that takes place in the de-ethanizer.

The propane is driven off by fractionating, out the top, and the remaining hydrocarbons pass out the bottom into

a de-butanizer, where again a similar operation takes place to separate out the butanes, and the gasoline that remains, which consists largely of possibly some butane, but mainly the pentanes, hexanes, and heavier hydrocarbons, comes out the bottom of the de-butanizer, and those products, propane, butane, and gasoline, proceed on to tanks or vessels in the plant that provide temporary storage from which the individual materials may be sold to whatever markets are available, or they may move to those markets by a number of means, either by tank truck, or tank car, or by pipe line or any portion (Page 390) may be moved by one or the other of those means.

MR. GROVE: Before you leave that, may I ask you to clarify something in my own mind.

The fractioning tower — did you speak of that with reference to the still, or the de-ethanizer?

THE WITNESS: The three vessels that are mentioned as the de-ethanizer, de-propanizer and de-butanizer are fractionating towers.

MR. GROVE: That term can apply to all of them but the still?

THE WITNESS: That is right.

MR. GROVE: Thank you.

BY MR. ILLIG:

Q Mr. Schilthuis, as these exhibits, Exhibits No. 23 and No. 24 have been prepared, as you stated, to show typical lease facilities and a typical casinghead gas plant operation, we are going to refer in a minute to a number of casinghead gas contracts entered into by Humble as a lease owner, and third parties, as plant operator.

Now, would you say that these exhibits fairly represent the situation existing as to the lease or leases from which Humble sells casinghead gas under these contracts, and the plant set-up under which such gas is handled in these cases?

A Yes, I believe it represents the general case. I presume you are speaking there of the situations that are (Page 391) involved in this hearing.

Q The situations that are involved in this hearing.

A That is correct.

Q Now, we have heard some testimony in the last several days, some of which you have heard, regarding the description of facilities such as are shown in Exhibits No. 23 and 24, and the question has arisen as to which of these facilities are production and gathering facilities.

Do you have an opinion on this point, or do you have a concept of production and gathering facilities which you would desire to offer at this time?

A Yes, I would say that all of the facilities and operations which have been described on Exhibits No. 23 and 24, as are labeled on these charts here, fall within the scope, as a general understanding in the industry of such operations as are included in the term "Production Operations."

Now, that would not be true, of course, of the dotted lines that are shown and so labeled, gas transmission gathering line, on both exhibits, but the remainder of the facilities upstream of the dotted lines, with the possible exception of the purchasers' meter, as indicated here on Exhibit 24, are commonly understood to be contained within the scope of production operations.

PRESIDING EXAMINER: Why do you characterize those dotted lines as gathering lines?

(Page 392) THE WITNESS: Well, I used that designation in this example to depict a case where a gathering line of a gas transmission company came to the plant to receive certain quantities of residue gas that might be available from the plant for sale, and take such gas to the juncture of the gathering line with the main pipe line of the transmission company.

PRESIDING EXAMINER: In other words, you have assumed that that situation did exist?

THE WITNESS: That is correct.

BY MR. ILLIG:

Q Mr. Schilthuis, the green and red dashed lines in Exhibit No. 23, and the solid green line in the same exhibit, which are designated respectively "casinghead gas gathering system" and "residue gas system," those are, in effect, plant gathering lines — I mean, the first line is in effect a plant gathering line?

A You mean the red and green is the plant gathering system, yes, and the solid green is the residue gas system by which the plant delivers the residue gas back to the leases as required for fuel and power and other purposes previously mentioned.

Q So you in effect mean that these facilities shown here are production and gathering facilities rather than solely being production facilities?

A Yes, but they are commonly understood to be within (Page 393) the scope of production operation, including the plant, itself, the plant operation itself.

Q One further point of clarification, on Humble's Exhibit No. 23, the plant gathering system oftentimes extends through the plant, does it not, the casinghead gas gathering system for the plant — does it at times extend through the plant?

These lines show it leading only to the edge of the plant?

A Well, they normally extend into the plant as depicted on Exhibit No. 24, to deliver the gas to certain vessels, usually the scrubber, the inlet gas scrubber is the usual term given to it.

Q I merely want to make that clear, because Exhibit No. 23 shows the line as stopping, apparently, on the plant site, whereas Exhibit No. 24 shows it coming into the plant.

Do you have a generalized concept of production and gathering from the operator's point of view, and based on your experience in the gas industry?

A I believe I gave you a description of what my thought was as to what type of operations of this nature constituted a production operation.

I would be glad to tell you what my thinking is regarding what constitutes a gathering operation, in general terms, such as is included in the production operation here with (Page 394) reference to the gathering of the raw casinghead gas from the various leases, as shown on Exhibit No. 23, through the dashed green and red lines to the processing plant.

There can be other gathering lines, as well as the gathering lines that have to do with the casinghead gas gathering lines delivering casinghead gas from leases to a processing plant, which lines are normally constructed and owned by the plant operator.

Gathering as applied to natural gas operations — and I speak there of any type of natural gas operations — is commonly understood to involve the function of, 1: moving or collecting gas from lease or field separators and tank batteries where the gas is separated from oil or condensate and water, with which it may be produced, and flowed from the producing well or wells to a central location or locations in or near the field where the gas may be processed and purified to further recover liquefiable hydrocarbon constituents, and remove objectionable impurities, or foreign matter, thus rendering the gas suitable and safe for use; and, two: further moving and delivering the gas through gathering or lateral lines to the main gas transmission pipe line at which point it may be co-mingled with gas originating from other fields.

The lines through which the mixture of gas and oil, or condensate and water, and other impurities and foreign materials are flowed from the producing wells to lease or field (Page 395) separators and tank batteries are commonly termed "flow lines."

If no lease or field separators and tank batteries are required or used, the gas gathering lines are considered as extending to the wells, or the vicinity thereof.

Q As you used the term "production operation" in answer to an earlier question, you used it in a general sense which embraces the gathering operation that you described, is that correct?

A The gathering operation that I described with reference to the gathering of the raw casinghead gas from the outlet or near the outlet of the lease separators on the various leases to the processing plant, or to a central point in the field.

Q Turning now to the casinghead gas plant, by what persons or groups of persons are casinghead gas plants usually built and operated, I mean in a general sense?

A The casinghead gas processing plant may be owned and operated by one or more of the producers or lease owners and operators in the field, or by an outside party that has no interest in the field, or it might be owned and operated by a gas transmission line operator.

I believe that covers the general types of ownership of that character of plant.

Q Now, you have stated that you are generally familiar with casinghead gas contracts, and I will ask you between (Page 396) whom are such contracts entered into?

A Casinghead gas contracts are entered into between the lease operators in a field that produce casinghead gas and the owner and operator of the casinghead gas processing plant.

Q I will ask you further whether or not the terms of casinghead gas contracts have not become more or less standardized?

A They have in their general terms, yes.

Q Can you mention the *manes*[sic] of several of the standard forms of casinghead gas contracts?

A Well, there is the standard form of the Natural Gasoline Association of America, termed the 1932 contract. That is one form.

Another is the standard form dated 1939, also of the Natural Gasoline Association of America, and there may be the same form which is prepared and used by the El Paso Natural Gas Company — sometimes we refer to it as the El Paso form of contract.

Q The El Paso form which we have introduced or which we have identified as Humble's Exhibit No. 27, is in effect, the 1939 form, but with a special clause inserted by El Paso to cover payment for residue gas, is that correct?

A That is correct.

Q And Humble's Exhibit No. 26 is the 1932 form of (Page 387) NGAA Contract, is it not ?

A Yes.

Q Now, sometimes, is it true that companies print their own forms which involve minor variations from these standard forms?

A They do.

Q And among such companies that print their own forms is a form printed by Phillips Petroleum Company, is it not?

A That is correct.

Q You are familiar, of course, in detail with all of these forms, are you not?

A Yes.

Q In a general way, please describe the terms of a normal casinghead contract?

A Under the casinghead gas, the usual casinghead gas contract, the lease operator contracts to deliver all of the raw casinghead gas which is available from his lease or leases to the plant operator, usually at the outlet of the lease separator, which may be located on the lease, or near the lease.

There the gas is taken by the plant into its casinghead plant gathering system, and in return for taking the gas, the raw casinghead gas, and buying it at that point — that is near the outlet of the lease separator as the usual case, (Page 398) the casinghead plant operator contracts to pay the lease operator, and producer of the raw casinghead gas, a certain part or portion of the proceeds received from the plant operator's sale of the liquefied products that are recovered and saved and sold from the plant.

Those payments depend upon the value or price at which the plant owner makes his sale to whatever customer he may have, and also upon the richness of the casinghead gas delivered from the lease of the operator, of the lease operator, and in some cases upon the volume of the gas, total volume of the gas, that is processed in the plant.

In addition, the lease operator receives as payment a portion of the net proceeds received by the plant operator for his sale of whatever volume of residue gas may remain after lease uses and plant uses, to whatever buyer he may have, after deduction of certain costs, such as sweetening the gas, or further compression of the gas, in order to effect delivery of the gas in usable form to the buyer of the residue gas.

I might say that the buyer of the casinghead gas — in this case the plant operator — makes his contract with full

knowledge that in the usual cases he is buying whatever raw casinghead gas may be available from the lease operator's property.

In other words, if there is not sufficient gas remaining from the residue as delivered back by the plant to the (Page 399) lease operator, the lease operator has the right to use such quantities of raw gas, before delivery to the plant, as he may require, and, if necessary, the lease operator may retain all of the raw casinghead gas, if his needs demand, and the plant would get no raw casinghead gas, and if that is the case, as far as that particular lease is concerned, there would remain no residue gas after processing in the plant to sell to anyone.

Q Now, I will ask you, in the case where a plant operator does make a sale of residue gas, does the lease owner ever have any voice in what disposition is made of it?

A Not in the usual case of the casinghead gas contract.

Q And is the plant owner ever required to advise the lease operator as to what happens to that part of the residue, or to whom it is sold?

A No, he is not.

Q Now, Mr. Schilthuis, in this hearing, in this proceeding, insofar as Humble is concerned, are you concerned with Humble's position as a seller of casinghead gas to a third party who operates one of these casinghead gas plants, and who may, after processing sell part of the residue gas in interstate commerce?

A Yes.

Q I would like at this time for you to refer to (Page 400) Humble's Exhibit No. 25, and I will ask you whether or not such Exhibit No. 25 lists the several casinghead gas contracts between Humble, as a lease operator, and a third party, who is a plant operator, and where after pro-

cessing a part of the residue gas may find its way into interstate commerce?

A I wonder if I could have that question read, please?

PRESIDING EXAMINER: Read the question.

MR. ILLIG: I would be glad to restate it.

PRESIDING EXAMINER: Let the reporter read it.

(The question of Counsel, appearing at page 399, lines 25, and lines 1-6, page 400, was read by the reporter.)

THE WITNESS: I would like to ask, Counsel, you referred to "third party."

BY MR. ILLIG:

Q By "third party," I simply mean a company that is not affiliated with Humble, or where it doesn't involve Humble, itself.

A Who do you mean is the third party, in your illustration?

Q For example, in the first contract on this list, the contract is between Humble and Shell. Shell is a third party to Humble. I am sorry if I confused you —

MR. GROVE: You have got me confused, now, frankly.

(Page 401) BY MR. ILLIG:

Q Let me restate the question. What I am asking is whether Exhibit No. 25 doesn't list the casinghead contracts which Humble has entered into with plant owners covering casinghead gas, where part of the residue gas after processing may find its way into interstate commerce?

A It does.

PRESIDING EXAMINER: May find its way?

MR. ILLIG: My question was, "may find its way into interstate commerce."

THE WITNESS: It does.

BY MR. ILLIG:

Q Now, for convenience, in connection with this list of contracts in Humble's Exhibit No. 25, as you state, they are

limited to those agreements where, after inquiry, you found out or have reason to believe that a portion of the residue gas on its sale by the plant owner, moves across the state line.

I would like to ask you the nature of the inquiry which you made of these several buyers of casinghead gas from Humble in order to ascertain whether or not that was a fact?

A We — referring either to myself or members of the Staff in the Gas Division — made the inquiries in connection with all of the casinghead gas contracts that we have in effect between Humble and another party owning and (Page 402) operating a casinghead gas plant, to whom we are selling casinghead gas, as to whether or not any part of the gas, the residue gas from their plant, was sold by them to a pipe line that moved the gas finally into interstate commerce, or across the state line, and from the information, the results of the inquiries we made, we determined that this list of contracts were the cases in which the gas under such casinghead contracts as we have does so move across state lines, or a part of the gas, at least, from the residue gas from the plant.

Q These inquiries, I believe, were made by telephone or by other informal types of inquiry, were they not?

A They were, and we sought, in order to get the information that we felt we needed, we asked the plant operators if they would give us a copy, furnish us with a copy of whatever application they either had made, or planned to make to the Federal Power Commission in connection with the sale of the residue gas to a buyer who may have taken the gas into interstate commerce, or across the state line.

In every case, we were advised that they were so pressed with that type of inquiry, and with making their own applications, that they could not furnish us with a copy

of the application that they might or might not make, or that they may have made, and so we simply made the inquiry as to whether or not they felt, or had knowledge of whether or not (Page 403) any part of the residue gas that they sold to a buyer was taken by the buyer across the state line for final disposition, or use.

Q Now, in the final analysis, what they advised you was merely that a part of the total residue gas which they, as plant owner, sold, moved across the state line?

A That was the information we got.

Q And you had no definite information from them that any part of Humble's residue gas moved across the state line, did you?

A No, but of course in these cases it was our understanding that the gas was co-mingled with other gas similarily taken by the plant into its casinghead gas gathering system from other leases, either in that field or in other fields, and there was no way of telling what part of the gas, after it got into the plant, was our gas as opposed to the gas that came from the leases of other operators.

Q In other words, it was assumed in these cases that Humble's residue gas participated percentagewise in the total residue sold by these plant owners?

A Yes.

I might correct my statement that I think it is, as I understand it, incorrect to speak of Humble's gas, after it is sold at the outlet of the separator on the lease, as Humble's residue gas, because the gas — except as the residue gas is (Page 404) required to be delivered back to the lease owner for lease fuel and other purposes — is the property of the plant owner, as I understand it.

Q Turning now to Humble's Exhibit No. 25, for convenience you have attempted to group or classify Humble's contracts, I believe, into three categories, or groups.

Will you please explain briefly the classification made by reference to this exhibit?

A The casinghead gas contracts that are listed by contract date and title on the first four pages, are those that are written on the standard form of casinghead contracts, such as is illustrated in the Exhibit No. 26, and that comprises a total of 36 such contracts, as listed through page 4 of Exhibit No. 25.

Those listed on page 5, under the heading El Paso Form of Casinghead Gas Contract, totaling eight in number, are those which are written on the form of casinghead contract entitled The El Paso Type of Contract, such as is illustrated in Exhibit No. 27, and the four which are listed on page 6 of Exhibit No. 25, are those covering the sale of Humble's residue gas by the operator of a lease in which Humble has a non-operating interest.

And I might say that that sale, so far as Humble is concerned, takes place through a so-called division order, by which order it authorizes the operator of the lease in which (Page 405) Humble has an interest to sell the casinghead gas at the lease, that part belonging to Humble, to whomever may purchase the operator's casinghead gas.

(Page 406) Q Now, taking Humble's Exhibit 26, will you run over with me the essential terms of the 1932 form of standard casinghead gas contract.

First I will ask you, by reference to the second "Whereas" clause of that contract, to read the provision dealing with what is sold under the contract.

PRESIDING EXAMINER: Weren't you going to offer this contract in evidence?

MR. ILLIG: The contract will be offered in evidence, but we desire, Mr. Examiner, to explain the provisions of the one form as contrasted with another, so that we may show that these groupings of contracts that we have talked about

are substantially like the various forms under which we have classified them. For that purpose —

PRESIDING EXAMINER: Aren't those differences apparent on the face of the contracts? Does the witness have to read parts of the contracts to bring that out?

MR. ILLIG: You could get it in that way, yes, sir. It was my thought that one reading this record would have a better picture of it if we attempted a very short summary of these provisions.

PRESIDING EXAMINER: I wouldn't have any objection to that, but I don't see any point in having the witness read provisions out of the contract; that is all.

MR. ILLIG: I will ask him to summarize those provisions (Page 407) in his own words.

PRESIDING EXAMINER: All right.

THE WITNESS: The lease operator, who is a party to the type of contract illustrated by Exhibit 26 sells his casinghead gas as produced from the oil wells, and he sells the gas to the casinghead gas plant operator for the purpose of extracting therefrom the gasoline and such other products as may be extracted, saved and sold from the plant.

BY MR. ILLIG:

Q Now, the delivery point under this form of contract is where?

A It is at the tank battery, or at the traps, the separators on the lease.

Q I believe you have already described the general provisions of this form with respect to payment to the seller for casinghead gas?

A Yes.

Q And you have also described the provisions with respect to the return of residue?

A Yes.

Q I will ask you to turn now to Humble's Exhibit 27, and let us look at the same points in that form.

I will ask first if the substance sold there in the second "Whereas" is again the same substance as sold under the other form?

(Page 408) A The lease operator is selling whatever gas is produced from the lease to the plant operator, and it is sold and title passes where the gas is sold, namely on the lease at or near the outlet of the tank battery and separator.

Q And the delivery point of the casinghead gas is where?

A It is at a delivery point that is designated strictly by the buyer, but it is in these cases at or near the outlet of the lease separator.

Q Now, on this particular form, which is a 1939 form as we have said, but one which has been adopted by El Paso Natural Gas Company, what special provisions are in this form dealing with residue gas?

A Well, in the El Paso form, the determination of the portion of the proceeds derived by the plant operator from the sale of whatever residue from the plant is available for sale, and that he does sell, is determined by certain prices that are established in Section 4(c) of the contract, or there set out; and the plant operator is obligated to acount to the lease operator for the residue gas sold at those prices, as set forth.

The prices vary with the percent, or rather with the gasoline content of the gas, and also — well, that is the main provision that determines it.

Q The prices will vary with time, will they not?

(Page 409) A Yes, prices vary with time. There are increments of time during which the various prices are applicable.

MR. GROVE: What do you mean by that?

THE WITNESS: Well, referring to Section 4(c) —

MR. ILLIG: It should be 4(b). I misled you there. It should be 4(b).

THE WITNESS: Yes, it is 4(b) of Exhibit 27. Paragraph 1 under 4(b) says that for surplus gas from casinghead gas produced from formations encountered at a depth of 4,000 feet or less from the surface of the land, in amount equal to 50 percent of all of the gas taken prior to January 1, 1953, 5.5 cents for each 1,000 cubic feet.

Then "B" another price is set for the period from January 1, 1953 to December 31, 1957; and another price from January 1, 1958 to December 31, 1962; and still another price during the period January 1, 1963 to December 31, 1967.

Then during the period beginning January 1, 1968 and until the contract is terminated, the prevailing market price for residue gas in the field at the commencement of such period.

BY MR. ILLIG:

Q Now, I will ask you if the provisions of Paragraph 2 of 4(b) merely repeat that, but specify different prices for gas produced from a greater depth.

A That is correct.

Q In this respect, this form differs from the other (Page 410) form which you have talked about, does it not?

A Yes.

Q In respect to payment?

A There are no specified prices set out in the contract such as is illustrated by Exhibit 26.

Q Now, turning back for a moment to Humble's Exhibit 25, I will ask you whether or not some of the contracts listed on the first four pages of that exhibit, under the heading "Standard Form" are not contracts that have been

especially printed by companies such as the contract printed by Phillips Petroleum Company?

A They are.

Q And as such, they represent minor variations from the standard form, do they not?

A That is correct.

Q But you have examined the Phillips type of form, and in your opinion that form represents no substantial variation from the standard form?

A The general provisions by which the payments are made are the same. The details of the manner in which the proceeds are arrived at differ somewhat.

Q And therefore you have classified those contracts, even though they may be on Phillips' form or another company's form, under the classification of standard form casinghead contracts?

(Page 411) A We have.

Q So therefore Humble, in this case, has been submitting its contracts for status determination in three groups: Group A, the standard form with the variations you mentioned; Group B, the El Paso Form; and, Group C, the Division Order form?

A That is correct.

Q Now, at this time would you please refer to Humble's Exhibits 29 and 30, which we have called workout statements under these two basic forms of contracts, the 1932 and the 1939 El Paso form, and would you please very briefly tell what these work statements show?

A These statements were prepared to indicate the type of calculation which is involved, and applying the contract terms to a given situation under the contract, the particular contract that is used for illustration, titled near the upper part of each page of Exhibits 29 and 30, to arrive at the portion of the proceeds from the liquid products that are

extracted, saved and sold by the plant operator that must be paid to the lease operator who delivers his gas to the plant, his casinghead gas to the plant; and also the portion of the proceeds that the plant operator must pay the lease owner out of the sale that the plant operator makes of residue gas that may be available for sale from the plant, and is actually sold from the plant.

(Page 412) Q In other words, the figures on the right-hand side of the page show the amount of money that goes to gasoline, butane, propane and residue respectively, do they?

A Yes, and then the total of the three numbers as shown on Exhibit 20 would represent the total payment due the lease operator for the lease operator's gas sold at the plant for the given month.

In this case of Exhibit 29, the settlement illustrated is for the month of June, 1954, and that refers to the contract between Humble and Shell dated January 7, 1941, which is presented as Exhibit 26.

Now, the Exhibit 30 is the same thing in connection with the illustrative contract, as presented in Exhibit 27, showing there the proceeds, again, that the plant operator is obligated to pay to the lease owner for the casinghead gas sold to the plant.

Q I will ask you two further general questions in regard to these casinghead contracts.

First, does Humble as seller of the casinghead gas have any control over the buyer's sale of the residue?

A No, he does not.

Q And further, at the time Humble entered into these casinghead agreements with the respective buyers, did Humble have any knowledge as to what disposition the buyer intended to make of the residue?

(Page 413) A No, the gas may have been, as far as

we know, flared or returned to the lease, in case they find it necessary to so use the gas; or it might be sold by the plant operator to a local buyer. It might be a drilling rig, or any other type of market, including the market which would require the movement of the gas across the state line.

Q I will ask you now to turn to Humble's Exhibit 28, which we have identified and called a gas division order, and I will ask you to describe the nature of the sale involved in this type of instrument?

A This is the type of instrument which authorizes the joint lease operator on behalf of—issued by, I should say—the lease joint owner non-operator to permit the lease operators to sell the non-operator interest gas to whoever the operator sells his gas, and to receive payment from the party to whom he sells the gas, and to account to the non-operator lease joint interest on the same basis as he receives payment for the gas that he delivers from his wells — the latter I am referring to as the joint interest operator ot the lease.

The instrument sets out the various divisions of interest in the lease in question, and authorizes the sale by the non-operator joint interest, such as is made by the operator of the lease to the plant owner.

Q Now, do you know where the point of delivery of the (Page 414) gas is under this type of instrument?

A Normally, again, the sale would be made at or near the outlet of the separator, or tank battery, because the operator of the lease would normally execute a casinghead gas contract for the gas, his gas and the gas that was authorized for sale by the lease non-operator, who executed the instrument to a casinghead gas plant.

Q The casinghead gas sold under this type of instrument, at least in the four cases that we have set up in our

exhibit, does move to a casinghead gas plant for processing?

A It does, in the instances that are shown, listed in Exhibit 25.

Q In this type of instrument —

A On page 6 of Exhibit 25.

Q And in this type of sale, Humble has no control over the buyer's sale of the residue gas, does it?

A The buyer being which party, counsel?

Q The buyer, in the case of our exhibit, is Phillips Petroleum Company, addressee of the division order?

A No, except that Humble can terminate the agreement under the terms of the agreement at any time and dispose of the gas in another way.

Q That is a provision common to division orders?

A That is correct. I might say that the same type of order, division order, is used and applied to the disposition (Page 415) of crude oil, and condensate.

Q I have one further question. Humble, at the time it signed these division orders here involved, did not have any knowledge as to what disposition might be made of the residue gas in these four instances?

A It did not.

Line 4, Page 425, through Line 5, Page 427:

(Page 425) MR. ILLIG: I want now, Mr. Examiner, to refer to the contracts listed in Humble's Exhibit 25, and which were filed on November 30 with the Federal Power Commission, and also to each of the applications for public convenience and necessity as to such contracts which were filed by Humble on that day.

I want also to refer to contracts dated November 3, 1952 between Humble as seller, and El Paso Natural Gas Company as buyer, covering gas from the Sprayberry area in Upton, Reagan, Midland and Glasscock counties, Texas, and to the casinghead gas contract dated July 6,

1953 between Humble Oil and [sic] Refining Company as seller, and El Paso Natural Gas Company as buyer, covering gas sold from the Yarbrough-Allen Field in Ector County, Texas.

These are the last two contracts listed on that page of Humble's Exhibit 25 entitled "El Paso Natural Gas Company form of Casinghead Gas Contracts", and they are designated respectively as Humble's FPC gas rate schedule No. 3, and Humble's FPC gas rate schedule No. 5.

I want also to refer to the applications for certificates of convenience and necessity filed in connection with the latter contracts, and to ask that all of these contracts, and all of the applications for public convenience and necessity (Page 426) in relation thereto be incorporated in this record by reference, and my reason for asking for this incorporation by reference is to more particularly describe the contracts which are listed in Humble's Exhibit 25, so as to have the contracts, and, to the extent that they are relevant, the applications for public convenience and necessity in relation thereto before the Commission in this record.

MR. GROVE: Can you give us the docket numbers of those applications?

MR. ILLIG: Am I correct that docket numbers have not yet been assigned to those applications?

MR. FOSTER: They have not been assigned, Mr. Grove, and I doubt that they will be for some days yet to come. You perhaps know more about that than we do.

I have attempted to get them. You understand the difficulty that faces us by reason of that fact, and also by reason of the similar situation which obtains with respect to the rate filings. We are unable to give you what rate schedule designations will be accorded those filings by the Commission.

I regret that that leaves the record in a difficult state, but we are unable to do any better.

What I have said is not intended in any sense as critical of the Commission. We realize the deluge of work which confronts the Commission and its staff.

(Page 427) PRESIDING EXAMINER: The documents described by counsel for Humble will be identified for the purposes of this record as Item G by reference.

(THE DOCUMENTS ABOVE REFERRED TO WERE IDENTIFIED AS ITEM G BY REFERENCE).

Line 18, Page 431, through Line 7, Page 434:

(Page 431) BY MR. ILLIG:

Q Mr. Schilthuis, I want to ask you several general questions which I neglected to bring out earlier.

Humble Oil and [sic] Refining Company is a Texas corporation, is it not?

A It is.

Q Its principal office and place of business is in Houston, Texas?

(Page 432) A Yes.

Q In what activities is Humble Oil and [sic] Refining Company engaged?

A In the exploration, development, production, refining and marketing of petroleum and its products.

Q And in the course of conducting that business, Humble has discovered substantial reserves of natural gas; has it not?

A It has.

Q Now, Humble does not own or operate an interstate gas pipeline company; does it?

A No.

Q And it is not affiliated with any company that operates such a line, is it?

A It is not.

MR. GROVE: May I have the question read back, please?

PRESIDING EXAMINER: Do you want the last two questions?

MR. GROVE: Yes.

(The questions and answers were read.)

BY MR. ILLIG:

Q Mr. Schilthuis, I don't believe I gave you an opportunity to make one clarifying remark in connection with the contract which appears on Humble's Exhibit 25, being the last contract on page 1 of that exhibit.

Would you please state the clarification that you had to (Page 433) make in regard to that contract?

A I am sure that I have left the impression in the record, as I intended, that the points of delivery of the Humble's casinghead gas to the plant operator under these casinghead gas contracts and division order contracts listed in Exhibit 25, to the best of my knowledge, are at or near the outlet of the separators on the leases involved.

That is not exactly the case in connection with the one contract listed last, on page 1 of Exhibit 25.

Q Do you know where the point of delivery is —

A I do not know exactly where it is, although I do know that it is some distance from the lease separator and tank battery, where the gas is separated from the oil.

If there is a line, a gathering line that is laid and was laid by Humble to a point on the plant operator's casinghead gas gathering system in the field, the plant, to my knowledge — the casinghead gas plant is located in the Rincon Field, which is the field in which Humble's lease in this case is located, but the delivery of the gas to the gathering system of the plant operator is at a point some distance from the point where the gas comes off of the separator on the lease.

That is the only case to my knowledge that is of that nature.

Q And that point was only discovered within the last day (Page 434) or so, was it not?

A That is right.

Q I will ask you one further question in regard to Humble's Exhibit 25, and that is none of the buyers of casinghead gas under the contracts listed in this exhibit have any affiliation with Humble, do they?

A Not to my knowledge, no.

Line 18, Page 451, through Line 25, Page 452:

(Page 451) MR. ILLIG: Mr. Examiner, at this time I would like to offer in evidence Humble's Exhibits 23 through 32, inclusive, and Items "F" and "G", which have been designated by reference.

PRESIDING EXAMINER: Is there any objection to Exhibits 23 through 32, inclusive?

(No response)

PRESIDING EXAMINER: Those exhibits are received in (Page 452) evidence.

(THE DOCUMENTS ABOVE REFERRED TO, HERETOFORE MARKED FOR IDENTIFICATION AS EXHIBITS NOS. 23 THRU 32, INCLUSIVE, WERE RECEIVED IN EVIDENCE.)

PRESIDING EXAMINER: I understood Counsel to say that the statement he made here would suffice with respect to Item "F", and he wasn't pressing that offer.

MR. ILLIG: Mr. Examiner, I think that Item "F", if my recollection serves, was the application for re-hearing.

PRESIDING EXAMINER: That is correct.

MR. ILLIG: We do want to refer to that by reference.

My remarks were in lieu of reading from portions of the application.

PRESIDING EXAMINER: Is there any objections to Items "F" and "B" [sic] by reference?

MR. GROVE: The only purpose as I understood it, that

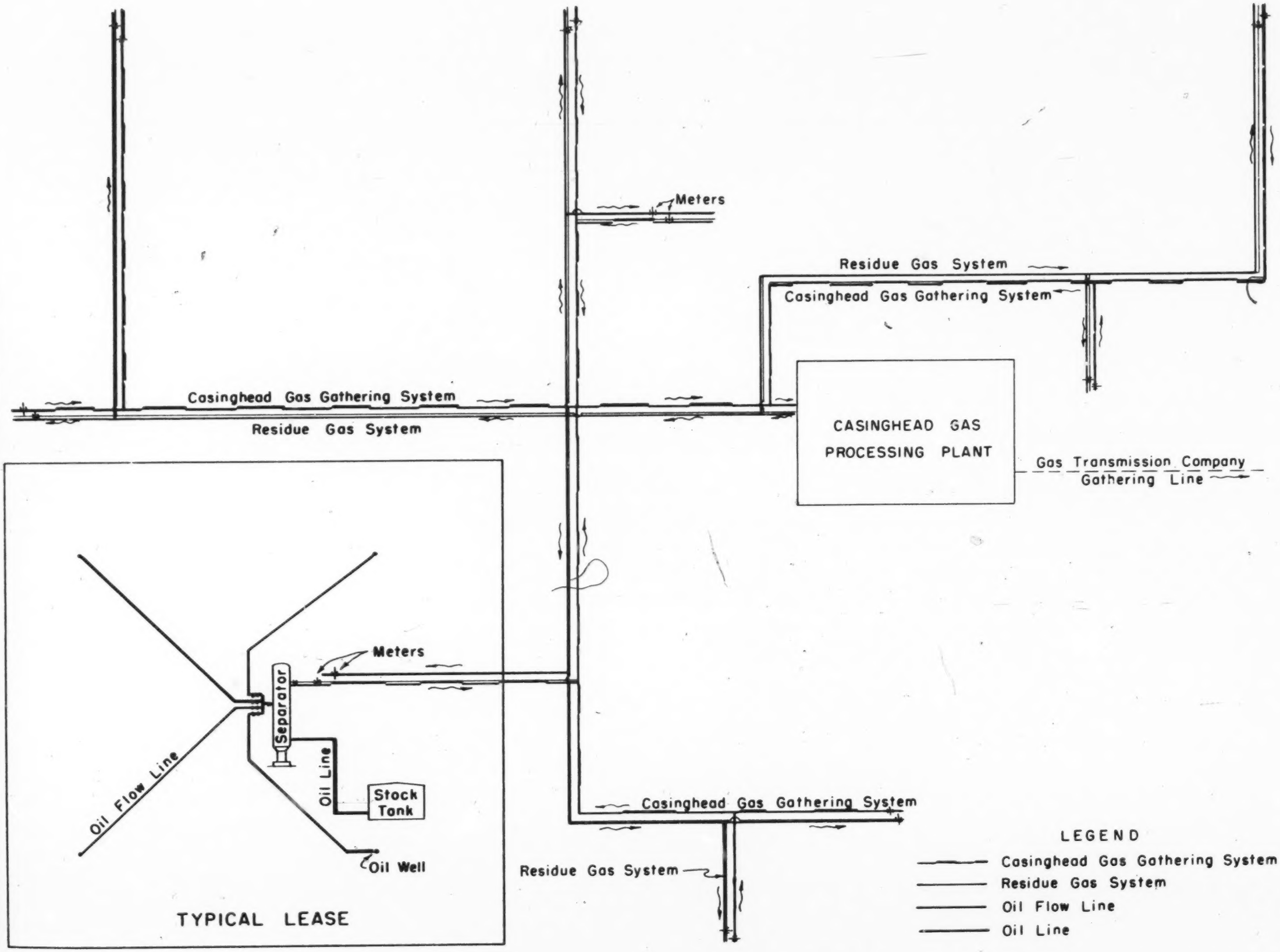
you had in desiring to incorporate by reference was merely to establish the fact that you had filed?

MR. ILLIG: And what was in it.

MR. GROVE: I am not going to agree at this time that it should go in by reference until I have another chance to look it over.

PRESIDING EXAMINER: Ruling will be deferred on Item "F". Item "G" is received in evidence by reference to the files of the Commission.

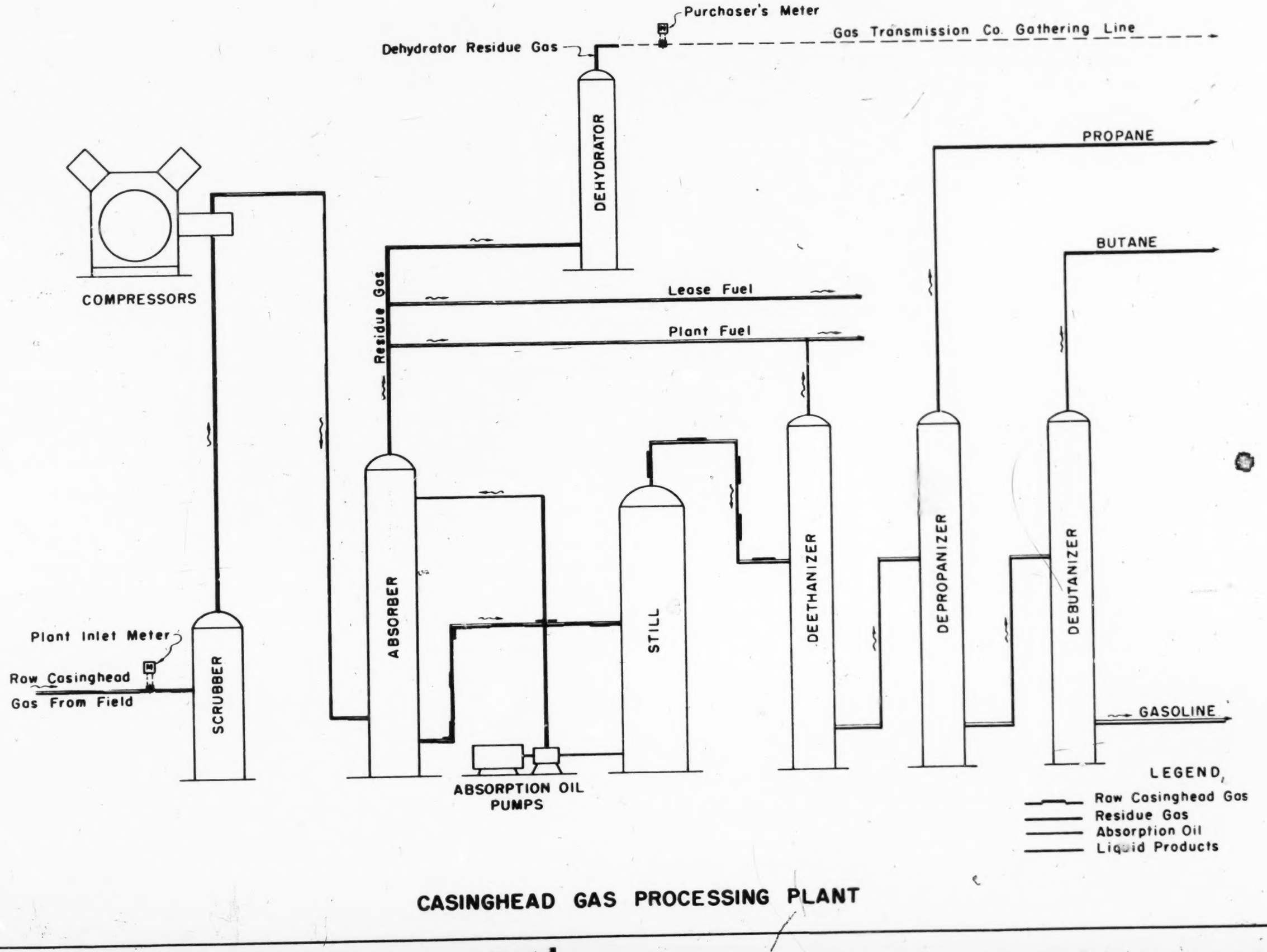
Exhibit No. 23



CASINGHEAD GAS PROCESSING PLANT AND LEASE GATHERING AND RESIDUE SYSTEM

Exhibit No. 24

(P. 40)



CASINGHEAD GAS PROCESSING PLANT

EXHIBIT 25

STANDARD FORM OF CASINGHEAD GAS CONTRACT

Casinghead gas contract dated February 16, 1939, between Humble Oil & Refining Company, Seller, and Shell Oil Company, Buyer, covering gas sold from the Wasson field, Gaines and Yoakum Counties, Texas.

Casinghead gas contract dated October 27, 1939, between Humble Oil & Refining Company, Seller, and Shell Oil Company, Buyer, covering gas sold from the Wasson field, Gaines and Yoakum Counties, Texas.

Casinghead gas contract dated August 23, 1940, between Humble Oil & Refining Company, Seller, and Shell Oil Company, Buyer, covering gas sold from the Wasson field, Gaines and Yoakum Counties, Texas.

Casinghead gas contract dated June 20, 1941, between Humble Oil & Refining Company, Seller, and Phillips Petroleum Company, Buyer, covering gas sold from the Vacuum field, Lea County, New Mexico.

Casinghead gas contract dated April 1, 1939, between Humble Oil & Refining Company, Seller, and Shell Oil Company, Buyer, covering gas sold from the Wasson field, Gaines and Yoakum Counties, Texas.

Casinghead gas contract dated January 6, 1927, between Humble Oil & Refining Company, Seller, and Phillips Petroleum Company, Buyer, covering gas sold from the Pampa field, Gray County, Texas.

Casinghead gas contract dated May 8, 1947, between Humble Oil & Refining Company, Seller, and Stanolind Oil and Gas Company, Buyer, covering gas sold from the Slaughter field, Terry and Hockley Counties, Texas.

Casinghead gas contract dated January 13, 1954, between Humble Oil & Refining Company, Seller, and Skelly Oil

Company, Buyer, covering gas sold from the Terry-Blinebry field, Lea County, New Mexico.

Casinghead gas contract dated September 1, 1953, between Humble Oil & Refi ng Company, Seller, and Skelly Oil Company, Buyer, covering gas sold from the Arrowhead, Brunson, Drinkard, N. Hare (McKee), Paddock and Penrose-Skelly fields, Lea County, New Mexico.

Casinghead gas contract dated September 8, 1953, between Humble Oil & Refining Company, Seller, and Stanolind Oil and Gas Company, Buyer, covering gas sold from the Hastings field, Brazoria and Galveston Counties, Texas.

Casinghead gas contract dated January 15, 1952, between Humble Oil & Refining Company, Seller, and Continental Oil Company, Buyer, covering gas sold from the Rincon field, Starr County, Texas.

Casinghead gas contract dated January 2, 1952, between Humble Oil & Refining Company, Seller, and The Texas Company, Buyer, covering gas sold from the Cogdell field, Scurry and Kent Counties, Texas.

Casinghead gas contract dated July 31, 1951, between Humble Oil & Refining Company, Seller, and Warren Petroleum Corporation, Buyer, covering gas sold from the Monument field, Lea County, New Mexico.

Casinghead gas contract dated July 31, 1951, between Humble Oil & Refining Company, Seller, and Warren Petroleum Corporation, Buyer, covering gas sold from the Monument field, Lea County, New Mexico.

Casinghead gas contract dated February 2, 1951, between Humble Oil & Refining Company, Seller, and C. V. Lyman, Buyer, covering gas sold from the Emperor-Holt field, Winkler County, Texas.

Casinghead gas contract dated July 1, 1950, between Humble Oil & Refining Company, Seller, and Standard Oil Company of Texas, Buyer, covering gas sold from the Kelly-Snyder field, Scurry County, Texas.

Casinghead gas contract dated May 1, 1950, between Humble Oil & Refining Company, Seller, and Sun Oil Company, Buyer, covering gas sold from the LaCopita field, Starr County, Texas.

Casinghead gas contract dated November 11, 1949, between Humble Oil & Refining Company, Seller, and Pecos Company, Buyer, covering gas sold from the Benedum field, Upton County, Texas.

Casinghead gas contract dated June 10, 1949, between Humble Oil & Refining Company, Seller, and Sid Richardson Gasoline Company, Buyer, covering gas sold from the Keystone-Silurian field, Winkler County, Texas.

Casinghead gas contract dated January 7, 1941, between Humble Oil & Refining Company, Seller, and Shell Oil Company, Buyer, covering gas sold from the Wasson field, Gaines and Yoakum Counties, Texas.

Casinghead gas contract dated August 18, 1948, between Humble Oil & Refining Company, Seller, and Gulf Oil Corporation, Buyer, covering gas sold from the Sand Hills fields, Crane County, Texas.

Casinghead gas contract dated September 1, 1951, between Humble Oil & Refining Company, Seller, and Phillips Petroleum Company, Buyer, covering gas sold from the Goldsmith field, Ector County, Texas.

Casinghead gas contract dated September 1, 1951, between Humble Oil & Refining Company, Seller, and Phillips Petroleum Company, Buyer, covering gas sold from the Goldsmith field, Ector County, Texas.

Casinghead gas contract dated January 1, 1953, between Humble Oil & Refining Company, Seller, and Phillips Petroleum Company, Buyer, covering gas sold from the McElroy field, Crane County, Texas.

Casinghead gas contract dated September 15, 1948, between Humble Oil & Refining Company, Seller, and Phillips

Petroleum Company, Buyer, covering gas sold from the Eunice field, Lea County, New Mexico.

Casinghead gas contract dated November 1, 1948, between Humble Oil & Refining Company, Seller, and Phillips Petroleum Company, Buyer, covering gas sold from the Eunice field, Lea County, New Mexico.

Casinghead gas contract dated February 28, 1949, between Humble Oil & Refining Company, Seller, and Phillips Petroleum Company, Buyer, covering gas sold from the Pampa field, Gray County, Texas.

Casinghead gas contract dated April 27, 1949, between Humble Oil & Refining Company, Seller, and Phillips Petroleum Company, Buyer, covering gas sold from the Goldsmith field, Ector County, Texas.

Casinghead gas contract dated April 27, 1949, between Humble Oil & Refining Company, Seller and Phillips Petroleum Company, Buyer, covering gas sold from the Goldsmith field, Ector County, Texas.

Casinghead gas contract dated February 1, 1948, between Humble Oil & Refining Company, Seller, and Phillips Petroleum Company, Buyer, covering gas sold from the Fullerton field, Andrews County, Texas.

Casinghead gas contract dated October 5, 1934, between Humble Oil & Refining Company, Seller and Phillips Petroleum Company, Buyer, covering gas sold from the Pampa field, Gray County, Texas.

Casinghead gas contract dated February 1, 1948, between Humble Oil & Refining Company, Seller, and Phillips Petroleum Company, Buyer, covering gas sold from the Andector field, Andrews and Ector Counties, Texas.

Casinghead gas contract dated March 29, 1948, between Humble Oil & Refining Company, Seller, and Phillips Petroleum Company, Buyer, covering gas sold from the Eunice field, Lea County, New Mexico.

Casinghead gas contract dated September 15, 1950, between Humble Oil & Refining Company, Seller and Phillips Petroleum Company, Buyer, covering gas sold from the Hobbs field, Lea County, New Mexico.

Casinghead gas contract dated September 15, 1950, between Humble Oil & Refining Company, Seller, and Phillips Petroleum Company, Buyer, covering gas sold from the Hobbs field, Lea County, New Mexico.

Casinghead gas contract dated November 1, 1950, between Humble Oil & Refining Company, Seller, and Phillips Petroleum Company, Buyer, covering gas sold from the Eunice field, Lea County, New Mexico.

EL PASO NATURAL GAS COMPANY
FORM OF CASINGHEAD GAS CONTRACT

Casinghead gas contract dated August 15, 1952, between Humble Oil & Refining Company, Seller, and El Paso Natural Gas Company, Buyer, covering gas sold from the Cooper-Jal field, Lea County, New Mexico.

Casinghead gas contract dated August 15, 1952, between Humble Oil & Refining Company, Seller, and El Paso Natural Gas Company, Buyer, covering gas sold from the Cooper-Jal field, Lea County, New Mexico.

Casinghead gas contract dated August 15, 1952, between Humble Oil & Refining Company, Seller, and El Paso Natural Gas Company, Buyer, covering gas sold from the Cooper-Jal field, Lea County, New Mexico.

Casinghead gas contract dated April 2, 1953, between Humble Oil & Refining Company, Seller, and El Paso Natural Gas Company, Buyer, covering gas sold from the Cooper-Jal field, Lea County, New Mexico.

Casinghead gas contract dated March 12, 1953, between Humble Oil & Refining Company, Seller, and El Paso Nat-

ural Gas Company, Buyer, covering gas sold from the Cooper-Jal field, Lea County, New Mexico.

Casinghead gas contract dated May 10, 1949, between Humble Oil & Refining Company, Seller, and El Paso Natural Gas Company, Buyer, covering gas sold from the Langlie-Mattix field, Lea County, New Mexico.

Casinghead gas contract dated November 3, 1952, as amended, between Humble Oil & Refining Company, Seller, and El Paso Natural Gas Company, Buyer, covering gas sold from the Spraberry Area, Upton, Reagan, Midland, and Glasscock Counties, Texas.

Casinghead gas contract dated July 6, 1953, as amended, between Humble Oil & Refining Company, Seller, and El Paso Natural Gas Company, Buyer, covering gas sold from the Yarbrough-Allen field, Ector County, Texas.

SALE OF CASINGHEAD GAS UNDER DIVISION ORDERS

Gas Division Order dated May 24, 1946, between Humble Oil & Refining Company and Phillips Petroleum Company, covering gas produced from the W. C. Bryse et al lease, Stowell Field, Chambers County, Texas.

Division Order dated September 1, 1943, Humble Oil & Refining Company, Non-Operator, and The Texas Company, Operator, covering the Koch-Jenkins Unit, Stowell Field, Chambers and Jefferson Counties, Texas.

Division Order dated May 6, 1947, Humble Oil & Refining Company, Non-Operator, and Stanolind Oil and Gas Company, Operator, covering the Steve Paul Lease, Hastings Field, Brazoria County, Texas.

Division Order dated April 15, 1944, Humble Oil & Refining Company, Non-Operator, and The Texas Company, Operator, covering the Federal-Jenkins Unit O/A, Stowell Field, Chambers County, Texas.

Form S. R. EXHIBIT 26

SHELL OIL COMPANY
Midland Area

Mailing Address
P. O. Box 1509
Midland, Texas

General Offices
Petroleum Building
Midland, Texas

October 26, 1949
Re: L. P. Bennett

Humble Oil & Refining Company
Humble Building
Houston 2, Texas
Attention: Mr. Jno. Sue
Gentlemen:

This has reference to the casinghead gas contract dated Jan. 7, 1941, as subsequently amended, covering the purchase by us of casinghead gas produced from your L. P. Bennett lease in the Wasson Field in Yoakum County, Texas.

We are in the process of enlarging our Wasson Gasoline Plants which, when completed, will include facilities for the recovery of a high percentage of desirable hydrocarbons contained in the gas, including propane which, heretofore, has not been recovered. As you will participate in the value of the propane recovered, we are attaching to each copy of this letter our printed form of rider entitled "Butane and Propane" under which settlement for butane and/or propane recovered from the casinghead gas purchased from this lease after November 1, 1949, is to be made.

It is agreed between you and us that one of these riders shall be attached to each copy of the above-mentioned contract as Paragraph Numbered 25 and effective November 1, 1949, shall become a part thereof and as of that date shall

supersede and replace that paragraph of said contract which now bears the Number 25 and is entitled "Butane". It is further agreed that effective November 1, 1949, the butane provisions of this rider shall cancel and terminate all prior agreements and amendments thereto which provide a basis for payment for butane recovered from said casinghead gas.

Said contract as heretofore and as herein amended shall remain in full force and effect. If you are agreeable to the foregoing, please indicate your acceptance thereof by signing three copies of this letter in the space provided, initialing each rider attached thereto, and returning the accepted copies of the letter to us. The fourth copy is included as a temporary file copy for you. A fully executed copy of the letter will be returned to you after it has been signed by Coltexo Corporation.

Yours very truly,

SHELL OIL COMPANY
By B. H. Ryan
Attorney-in-Fact

COLTEXO CORPORATION
By C. E. Kayser
President

ACCEPTED and AGREED TO THIS
15th day of November, 1949.
Humble Oil & Refining Company
By C. E. Reistle, Jr.
Director and Manager,
Production Department

CASINGHEAD GAS CONTRACT

In Stock and for Sale by
THE OLDS PRESS,
Tulsa, Okla.

STANDARD FORM REVISED–ADOPTED
by NATURAL GASOLINE ASSOCIATION
OF AMERICA, November 7, 1932

This Agreement, Made and entered into this 7th day of January, 1941, by and between Humble Oil & Refining Company, hereinafter referred to as the "Seller" and Shell Oil Company, Incorporated, hereinafter referred to as the "Buyer."

WITNESSETH: WHEREAS, Seller owns and holds a certain valid and subsisting oil and gas mining lease covering the following described lands situate and being within the County of Yoakum, State of Texas, to-wit:

Bennett Lease:

N½ & SE¼ of Section 738, Block D, John H. Gibson Survey,

and,

WHEREAS, Seller is operating the above described properties and certain wells on said lands are productive, or may be productive, in addition to oil, of what is termed casinghead gas, (it being understood that the term "casinghead gas" means the gas issuing from oil wells whether produced from the same sand or strata from which the oil is produced or by the induction of gas with compressors or other means for flowing the oil), and the Seller desires to sell the casinghead gas which may hereafter be produced from oil wells located on said premises; and,

WHEREAS, Buyer contemplates the construction of, or has in operation, a gasoline plant in the vicinity of said property and desires to buy said casinghead gas;

NOW, THEREFORE, in consideration of the sum of One ($1.00) Dollar paid by the Buyer to the Seller, receipt of which is hereby acknowledged, and other payments and covenants hereinafter specified, the Seller hereby grants, bargains, sells and agrees to deliver to the Buyer and the Buyer agrees to purchase and take from the Seller, subject to the stipulations and conditions hereinafter specified, all the casinghead gas now or hereafter produced from the wells on the lands hereinabove described, or hereafter drilled thereon.

1—PURPOSE—The gas hereby sold is conveyed to the Buyer for the purpose of manufacturing therefrom gasoline or such other product or products as may be manufactured at Buyer's plant.

2—DELIVERY PLACE—The delivery of the casinghead gas shall be made at vapor tight flow tanks and/or gas traps furnished by Seller and/or at the casingheads of the wells. Buyer may, with Seller's consent, install equipment acceptable to Seller on Seller's storage tanks for the purpose of saving and utilizing vapors therefrom, which vapors for the purpose of this contract shall be considered casinghead gas.

3—DELIVERY DATE—The delivery and reception of said gas shall begin on or before April 30, 1941, and failure to accept and/or agree to pay for said gas by said date shall give the Seller the right to cancel this contract any time thereafter before actual utilization begins by serving ten (10) days' written notice on Buyer.

4—LEAN AND FLUSH GAS—The Buyer agrees to take all the gas testing more than three-fourths gallons of gasoline per thousand cubic feet of gas; provided

that during flush casinghead gas production from the property covered hereby the Buyer shall only be obligated to take ratably as to quantity with all other flush production connected to its plant. Seller shall have the right to dispose of any gas not taken or paid for by the Buyer; provided that Buyer shall have the right to take any or all of such gas at any time thereafter conditioned upon Buyer giving Seller at least thirty days' notice of its election to so do.

5—RESIDUE GAS—The Buyer shall return to the nearest boundary line of the Seller's lease, above described, sufficient residue gas for the development and operation of said lease, the amount of such gas not to exceed that remaining from the quantity of casinghead gas delivered to the Buyer from said lease after the extraction of gasoline therefrom, less the proportionate part of said residue gas necessary for gasoline plant operation, both determined by the residue gas curve attached hereto; provided that in the event residue gas to be returned hereunder by the Buyer shall be insufficient in quantity for the purpose of developing and operating said lease, the Seller hereby reserves the right to use casinghead gas from its lease sufficient in quantity to make up the deficiency. Utilization of said residue gas so returned by the Buyer shall be at the Seller's risk. In the event Seller accepts and uses dry gas, furnished by Buyer, in excess of the amount of residue gas to which Seller is entitled, Seller shall pay Buyer for such dry gas at delivered cost to Buyer.

It is agreed and understood by and between the parties hereto, that if and when the residue gas remaining after the extraction of gasoline from such casinghead gas shall be more than sufficient for the needs of Buyer in the operation of said gasoline plant and more than sufficient for the needs and requirements of Seller for the development and operating purposes upon the premises from which the said casinghead gas is produced, then, and in that event, the

Buyer shall have the right to sell any or all surplus residue gas so remaining; provided that in the event of sale by the Buyer of any or all of such residue gas, Buyer shall pay to the Seller herein fifty per cent of the net proceeds received from the sale of such gas, such payments to be made at the same time as other payments hereunder. Net proceeds as herein used is defined as the gross proceeds less any cost of boosting and/or transportation necessary to market such gas. It is further agreed and understood that as a basis of settlement hereunder for the sale of residue gas, it shall be determined how much residue gas the Seller was entitled to have returned and the volume that actually was returned during the month for which settlement is to be made, and the difference shall be regarded as the volume of surplus residue gas available for sale from the casinghead gas delivered hereunder. The volume of surplus residue gas sold from the casinghead gas delivered hereunder shall be determined by the proportion which the volume of surplus residue gas available for sale from said delivery bears to the total volume of surplus residue gas available for sale from all casinghead gas delivered to said plant.

6—DILUTED GAS—The Seller hereby specifically reserves the right to introduce air, gas, or any other extraneous substance into the well or wells covered hereby or into the sand or sands from which said well or wells are producing when in the exclusive judgment of the Seller the introduction of such substances is desirable in the operation of such well or wells for the production of oil even though such well or wells may be entirely destroyed as a producer or producers of casinghead gas; provided that should the Seller's operations under this paragraph create a condition which in the exclusive judgment of the Buyer makes the taking and utilization of casinghead gas therefrom unprofitable to the Buyer, or should such operations tend to endanger the plant or prop-

erty of Buyer or the lives of Buyer's employees should such diluted or contaminated gas be taken, then Buyer, at its election, may discontinue taking the casinghead gas from the particular well or wells while being so operated.

7—RIGHT OF WAY—In so far as Seller's lease permits, Buyer is granted the right to lay and maintain lines and to install any necessary equipment on said lease and shall have the right to free entry for any purpose incidental to gasoline plant operations so long as such purpose does not interfere with lease operations or the rights of owners in fee. All line and other equipment placed by Buyer on said lands shall remain the property of the Buyer and, subject to the terms of this contract, may be removed by Buyer at any time.

8—SETTLEMENT TESTS—The gasoline content shall be determined by a field compression or charcoal adsorption—Seller's option—test made in accordance with the official code of the Natural Gasoline Association of America for testing natural gas for gasoline content. The specific gravity shall be determined in accordance with the specifications and test procedure of said association for the determination of specific gravity of natural gases by the balance method. The tests for gasoline content, air content and specific gravity of the gas shall be made by the Buyer quarterly except when, in the opinion of either party, a change in the method of operations of the lease will affect materially the gasoline content and specific gravity of the gas, in which event the tests shall be made at the demand of either party upon five (5) days' notice to the other party. The Buyer shall notify the Seller in writing ten (10) days previous to the quarterly tests in order that it may have a representative present to witness said tests and/or make joint tests with its own appliances. The content tests shall be computed on the basis of four (4) ounces above an assumed atmospheric pressure of

13.2 pounds per square inch absolute and at a base temperature of sixty (60) degrees Fahrenheit.

9—METERS—The casinghead gas delivered hereunder shall be measured by a suitable orifice meter, or meters, of standard make to be furnished, installed and kept in repair by Buyer on the lease herein covered. The amount of gas so metered shall be computed on the basis of four (4) ounces above an assumed atmospheric pressure of 13.2 pounds per square inch absolute at a base temperature of sixty (60) degrees Fahrenheit and at an assumed flowing temperature of 60° degrees Fahrenheit. The Buyer shall test, and if necessary adjust and repair, said meter, or meters, at or about the time the tests for gasoline content are made. Said meter, or meters, shall be open to inspection at all times by Seller in the presence of Buyer. In case any question arises as to the accuracy of the meter measurement said meter, or meters, shall be tested upon the demand of either party. The expense of such tests shall be borne by the party demanding same if the meter is found to be correct and by the Buyer if found incorrect. A registration within 3% of correct shall be considered correct. Settlement for any period of inoperation or inaccurate measurement shall be in accordance with the average readings taken during the last preceding ten days when the meter was registering accurately and the first ten days after the meter was restored to accuracy. If requested Buyer shall send the charts to Seller for checking after which they are to be returned to Buyer.

10—PRICE—The Buyer shall pay to Seller for the casinghead gas delivered hereunder a price per thousand cubic feet to be computed on the following basis:

1. When gasoline content is less than .75 gallons per thousand cubic feet:

(a) When average price is 2¢ per gallon, or less, 5% of the value of the gasoline.

(b) When average price is more than 2¢, but less than 4¢ per gallon, 10% of the value of the gasoline.

(c) When average price is 4¢, but less than 6¢ per gallon, 15% of the value of the gasoline.

(d) When the average price is 6¢ per gallon, or more, 20% of the value of the gasoline.

2. When gasoline content is .75 gallons per thousand cubic feet, but less than 1.75 gallons per thousand cubic feet:

(a) When average price is 2¢ per gallon, or less, 10% of the value of the gasoline.

(b) When average price is more than 2¢, but less than 4¢ per gallon, 15% of the value of the gasoline.

(c) When average price is 4¢, but less than 6¢ per gallon, 20% of the value of the gasoline.

(d) When the average price is 6¢ per gallon, or more, 25% of the value of the gasoline.

3. When gasoline content is 1.75 gallons per thousand cubic feet, or above:

(a) When average price is 2¢ per gallon, or less, 15% of the value of the gasoline.

(b) When average price is more than 2¢, but less than 4¢ per gallon, 20% of the value of the gasoline.

(c) When average price is 4¢, but less than 6¢ per gallon, 25% of the value of the gasoline.

(d) When the average price is 6¢ per gallon, or more, 33⅓% of the value of the gasoline.

The value of the gasoline contained in a thousand cubic feet of gas shall be determined by multiplying the gasoline

content (determined as hereinabove provided) by the average sales price of grade 26-70 natural gasoline, or its substantial equivalent, as quoted in the National Petroleum News for North Texas (f.o.b. Breckenridge) during settlement period.

11—PAYMENT—Payment shall be made by the Buyer not later than the 20th day of each month for all casinghead gas purchased hereunder during the preceding month, and at the time payment is made a statement showing full details of the accounts shall be transmitted to the Seller accompanying the Buyer's check in payment therefor. Examination by the Seller of the books of account kept by the Buyer respecting said gas account shall be permitted by the Buyer at any and all reasonable hours.

12—TITLE—The Seller warrants its title to said gas and that it has good right to sell said gas to Buyer but the Buyer shall not be required to make payments until the Seller shall have submitted abstracts of title covering said leasehold showing good and merchantable title in it and that it has good right to sell said casinghead gas, all to the satisfaction of the attorneys of the Buyer; provided however if the title of Seller is questioned, or involved in any action, the Buyer shall have the right to withhold payment during the pendency of such action or until said title is freed from such question, or until Seller furnishes bond conditioned to save Buyer harmless with surety acceptable to the Buyer.

13—ROYALTY—The Seller agrees to account and pay to the lessors or royalty owners in the lease above described, in strict accordance with the provisions thereof, the royalty on the casinghead gas sold and delivered hereunder to Buyer.

14—VACUUM—Upon request of Seller the Buyer shall apply and maintain on Seller's wells a vacuum substantially equal to that maintained on offset wells

by gasoline plants. Up to such maximum Seller shall have control of said vacuum at all times.

15—DRIP—The Buyer shall keep reasonably clear of obstruction all its pipe lines through which said gas is being delivered and shall own all liquid collected in such lines.

16—CASUALTY—Any failure of either party hereto to perform any of the obligations hereunder shall be excused if such failure is due to fires, strikes, floods, lack of water, winds, lightning, accidents or any circumstances beyond the control of the party failing to perform.

17—UNPROFITABLE GAS—In the event the casinghead gas from any well or wells on said lease becomes insufficient in volume or gasoline content, or for any cause becomes unprofitable for the extraction of gasoline therefrom, the Buyer shall have the right to cease taking the gas so long as such condition exists. It is further provided that if at any time the volume and/or gasoline content of the gas available to Buyer, or if any cause beyond its control, shall render the construction and/or operation of said plant unprofitable, Buyer may, by thirty days' written notice and payment, or tender, to Seller of Ten ($10.00) Dollars, cancel this contract.

18—PRIORITY RIGHTS OF SELLER—As said premises are being operated primarily for the production of oil, the taking of casinghead gas by the Buyer shall be subservient to said oil operations. The Seller may, at any time, without liability to Buyer clean out, deepen or abandon any well or wells on the above described properties, or may use any efficient, modern or improved method for the production of oil. Before any well or wells are taken out of service for any reason whatsoever Seller agrees to first shut off the same from communication with the gathering mains.

19—INDEMNITY—The Buyer shall indemnify and hold the Seller harmless against any claims for damages growing out of the operations conducted hereunder by the Buyer. Likewise the Seller shall indemnify and hold the Buyer harmless against any claims for damages growing out of Seller's operations of the lease herein described.

20—SCOPE—In the event the property above described covers more than one lease, this contract shall be construed as a separate contract on each lease.

21—REGULATORY BODIES—This contract shall be subject to all the rules and regulations of any duly constituted federal or state regulatory body having jurisdiction herein.

22—ARBITRATION—In the event of any dispute or controversy between the parties hereto involving the operations under this contract same shall be settled by arbitration. Each of the parties shall appoint an arbitrator and the two appointed shall select a third. The award of any two arbitrators shall be conclusive upon the parties and shall be made within thirty days after the appointment of the first arbitrator.

23—TERM—Either party shall have the right to terminate this contract at the expiration of Five (5) years from the date thereof or on any anniversary of said date thereafter by giving the other party thirty (30) days' notice, in writing, of its intention so to do, after which each party shall be released from all further liability hereunder; provided that in the event the oil and gas lease covering said premises should terminate before the expiration of the term of this contract, then this contract shall be cancelled contemporaneously with such termination.

24—ASSIGNMENT—This contract shall extend to and be binding upon the parties hereto, their heirs, administrators, successors and assigns, but no transfer of or succession to the interest of the Seller hereunder,

wholly or partially, shall affect or bind the Buyer until it shall have been furnished at the office of the Buyer in the city of Houston, Texas, with the original instrument or with proper proof that the claimant is legally entitled to such interest.

25—BUTANE AND PROPANE—It is agreed that in the event Buyer manufactures excess butane and propane, or either of them as hereinafter defined, from the casinghead gas delivered to Buyer hereunder, Seller shall receive additional payment for said casinghead gas in accordance with the following:

If Butane, propane, and/or a butane-propane mixture, as defined in the Natural Gasoline Association of America Liquefied Petroleum Gas Specifications and Test Methods (1940) or the latest revision thereof, is manufactured as a separate product, in addition to natural gasoline, at said plant and/or there is manufactured at said plant a natural gasoline having a Reid vapor pressure in excess of 26 pounds, then in any such event, all butane, propane, and/or butane-propane mixtures manufactured and saved in excess of the amount of such products which would have been normal constituents of 26 pound Reid vapor pressure natural gasoline, if all the natural gasoline manufactured at the plant had been 26 pound material, shall be considered excess butane and/or propane hereunder.

The following illustrates the method to be used in determining the total quantity of excess butane and/or propane manufactured and saved at the plant:

(1) During any period of time that all of the natural gasoline manufactured at said plant has a Reid vapor pressure of 26 pounds, then all of the butane, propane, and/or butane-propane mixture manufactured and saved as a separate product during such period shall be considered as excess butane and/or propane.

(2) During any period of time that the natural gasoline manufactured at said plant has a Reid vapor pressure of less than 26 pounds, then the calculated quantity of butane and/or propane which would be necessary to raise the vapor pressure of such natural gasoline to 26 pounds shall be deducted from the total quantity of butane, propane, and/or butane-propane mixture manufactured and saved as a separate product during such period, and the resulting quantity shall be considered as excess butane and/or propane.

(3) During any period of time that the natural gasoline manufactured at said plant has a Reid vapor pressure of more than 26 pounds, then all of the butane, propane, and/or butane-propane mixture manufactured and saved as a separate product during such period shall be considered as excess butane and/or propane; and further, the amount of excess butane and/or propane contained in such natural gasoline having a Reid vapor pressure of more than 26 pounds shall be computed by deducting from the total of such finished product that calculated portion of the finished product that is convertible to 26 pound material, and the resulting quantity shall be considered as excess butane and/or propane.

Buyer shall pay to Seller, in addition to the amounts payable under Article 10 hereof, the amount hereinafter specified for that portion of such excess butane and/or propane attributable to the casinghead gas purchased from the above described lease. Inasmuch as Buyer is also purchasing casinghead gas from others for processing in said plant, it is agreed that in determining the portion of the total quantity of excess butane and/or propane, as above defined, for which Seller is entitled to payment, there shall be used as a multiplier of the total amount of excess butane and/or propane manufactured and

saved at said plant during each month, determined as hereinabove specified, a fraction whose numerator shall be the number of gallons of gasoline contained in the casinghead gas delivered by Seller hereunder during such month, ascertained by field tests as provided in Article 8 hereof, and whose denominator shall be the total number of gallons of gasoline contained in all of the casinghead gas, ascertained in the same manner, processed in said plant during the same month. When commercial propane, as defined in the Natural Gasoline Association of America Liquefied Petroleum Gas Specifications and Test Methods (1940) or the latest revision thereof, is manufactured and saved at said plant as a separate product, the calculation therefor shall be separate and apart from the calculation for excess butane and/or butane-propane mixtures, but the latter products shall be regarded as butane and there shall be only one calculation therefor.

Such additional payments shall be made at the same time as other payments hereunder, and the amount of each such additional payment shall be the aggregate of the sums obtained by multiplying the respective volumes of excess butane and propane for which Seller is entitled to payment as above provided by the respective average net sales price per gallon at such plant for the butane and propane manufactured, saved, and sold at said plant and removed therefrom during the month covered by said payment, and by then multiplying each of such results by whichever of the following percentages is applicable:

(a) 15% when said average net sales price is 2¢ per gallon or less;

(b) 20% when said average net sales price is more than 2¢ but less than 4¢ per gallon;

(c) 25% when said average net sales price is 4¢ but less than 6¢ per gallon;

(d) 33⅓% when said average net sales price is 6¢ per gallon or more.

25—BUTANE—It is agreed that in the event Buyer manufactures excess butane, as hereinafter defined, from the casinghead gas delivered to Buyer hereunder, Seller shall receive additional payment for said casinghead gas in accordance with the following:

If butane is manufactured as a separate product, in addition to natural gasoline, at said plant, and/or there is manufactured at said plant a natural gasoline having a Reid vapor pressure in excess of 26 pounds, then in any such event, all butane manufactured and saved in excess of the amount of butane which would have been a normal constituent of 26 pound Reid vapor pressure natural gasoline, if all the natural gasoline manufactured at the plant had been 26 pound material, shall be considered excess butane hereunder.

The following illustrates the method to be used in determining the total quantity of excess butane manufactured and saved at the plant:

(1) During any period of time that all of the natural gasoline manufactured at said plant has a Reid vapor pressure of 26 pounds, then all of the butane manufactured and saved as a separate product during such period shall be considered as excess butane.

(2) During any period of time that the natural gasoline manufactured at said plant has a Reid vapor pressure of less than 26 pounds, then the calculated quantity of butane which would be necessary to raise the vapor pressure of such natural gasoline to 26 pounds shall be deducted from the total quantity of butane manufactured and saved as a separate product during such period, and the resulting quantity shall be considered as excess butane.

(3) During any period of time that the natural gasoline manufactured at said plant has a Reid vapor

pressure of more than 26 pounds, then all of the butane manufactured and saved as a separate product during such period shall be considered as excess butane; and further the amount of excess butane contained in such natural gasoline having a Reid vapor pressure of more than 26 pounds shall be computed by deducting from the total of such finished product that calculated portion of the finished product that is convertible to 26 pound material, and the resulting quantity shall be considered as excess butane.

Buyer shall pay to Seller, in addition to the amounts payable under Article 10 hereof, the amount hereinafter specified for that portion of such excess butane attributable to the casinghead gas purchased from the above described lease. Inasmuch as Buyer is also purchasing casinghead gas from others for processing in said plant, it is agreed that in determining the portion of the total quantity of excess butane, as above defined, for which Seller is entitled to payment, there shall be used as a multiplier of the total amount of excess butane manufactured and saved at said plant during each month, as above determined, a fraction whose numerator shall equal the number of gallons of gasoline contained in the casinghead gas delivered by Seller hereunder during such month, ascertained by field tests, as provided in Article 8 hereof, and whose denominator shall equal the total number of gallons of gasoline contained in all of the casinghead gas, ascertained in the same manner, processed in said plant during the same month.

Buyer shall pay to Seller for such portion of the total excess butane, for which Seller is entitled to payment, as above provided, twelve per cent (12%) of the following applicable price:

(a) ¾¢ per gallon for such portion of the excess butane manufactured and saved at said plant, and

removed therefrom during the months of April, May, June, July, August, and September.

(b) 1¼¢ per gallon for such portion of the excess butane manufactured and saved at said plant and removed therefrom during the months of October, November, December, January, February, and March.

It is agreed that in the event the Natural Gasoline Association of America hereafter adopts an amendment to the standard form of casinghead gas contract dated November 7, 1932, providing for settlements for excess butane, as hereinabove defined, at variance with the percentage of payment above set forth, such amendment shall be substituted for settlement purposes hereunder, effective as to excess butane manufactured from and after the end of the settlement period existing at the time the amendment is formally adopted by the Natural Gasoline Association of America.

IN WITNESS WHEREOF the parties have hereunto subscribed their names.

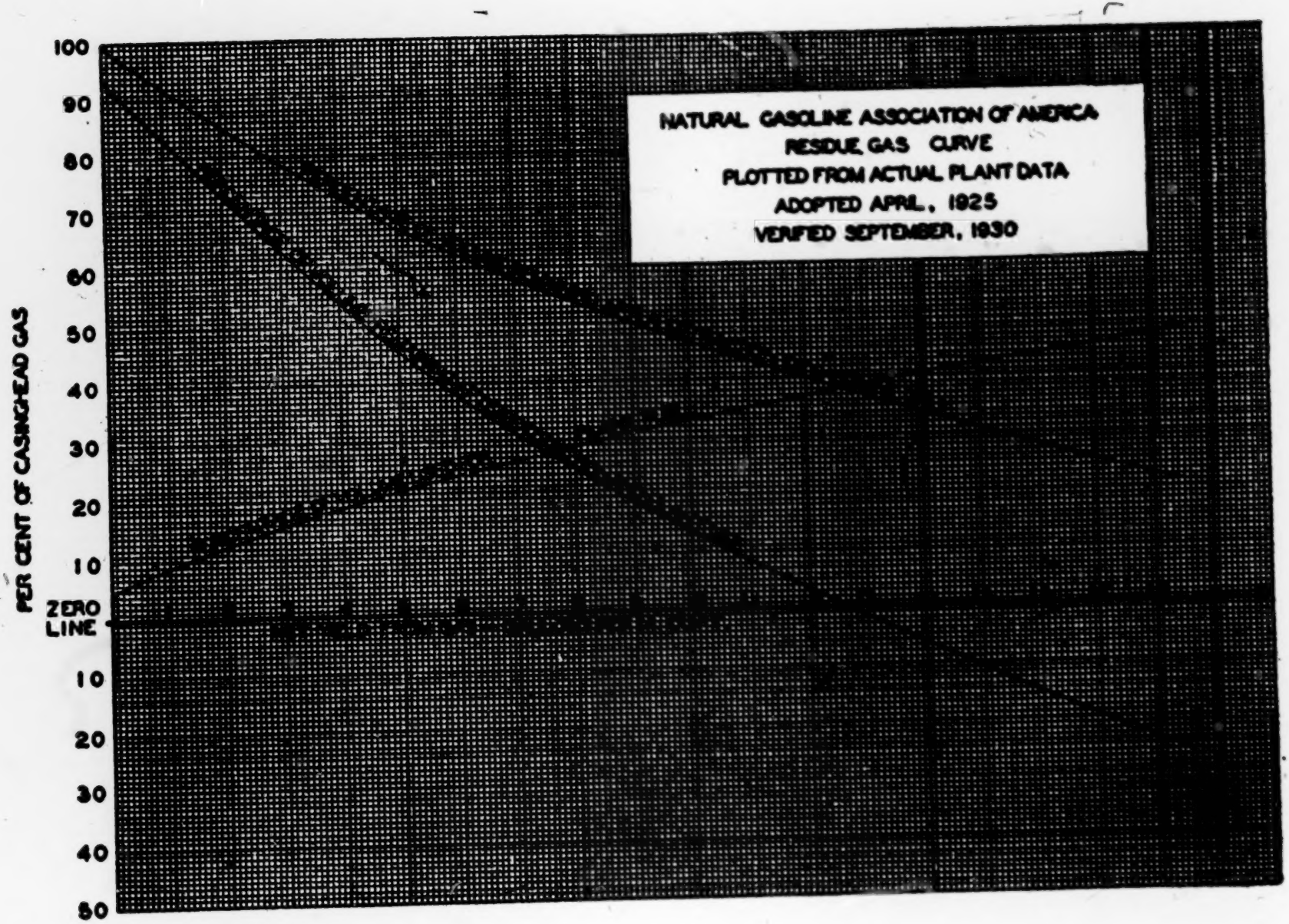
HUMBLE OIL & REFINING COMPANY
Seller.

By JOHN R. SUMAN
Vice President

Attest:
GEO. R. COOKE
Assistant Secretary

SHELL OIL COMPANY, INCORPORATED
Buyer.

By A. I. KEYS
Attorney-in-Fact



N.G.A.A. Standard Table, adopted February 9, 1932, showing the per cent of casinghead gas returnable as residue after extraction

GENERAL FORMS FOR ACKNOWLEDGEMENT

Applicable in Oklahoma, Kansas, Arkansas, Texas and New Mexico

CORPORATE FORM

STATE OF TEXAS }
COUNTY OF HARRIS } ss.

Before me, the undersigned authority, on this day personally appeared John R. Suman of Houston, Texas, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the free act and deed of the said Humble Oil & Refining Corp., a corporation, and that he having been duly authorized by the board of directors of said corporation, executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office at Houston, Tex., this the 21 day of January A. D., 1941.

My Commission Expires June 1, 1941.

H. W. Watkins
Notary Public in and for Harris
County, Texas

CORPORATE FORM

STATE OF .....
COUNTY OF ..... } ss.

Before me, the undersigned authority, on this day personally appeared ..... of ....., known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the free act and deed of the said ....., a corporation, and that he having been duly authorized by the board of directors of said corporation, executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office at.....
this the ..... day of ....., A.D., 19.....

My Commission Expires .....

.....

Notary Public in and for.....

County, ...

No. ..... Standard Form Revised

CASINGHEAD GAS CONTRACT

FROM

.....

.....

TO

.....

.....

Dated ....., 19.....

Lot..... Block..... Addition.....

Section..... Township..... Range.....

..... County, ...

No. of Acres..... Term.....

STATE OF.....
COUNTY OF.....

This instrument was filed for record on the .....day of ....., 19....., at.....o'clock.....M., and duly recorded in Book....., Page..... of the records of this office.

.....
County Clerk—Register of Deeds

By .....
Deputy.

When Recorded
Return to.....

.....

These blanks printed by The Olds Press, Tulsa, Okla., U.S.A.
215 East Third Street, one-half block east of Hotel Tulsa
Phone 4-9423. Mail or phone orders filled same hour received.
Write for our complete Catalog of Oil Field Forms

INDIVIDUAL FORM

STATE OF .....
COUNTY OF ..... } ss.

Before me, the undersigned, a Notary Public, in and for said County and State, on this ..... day of ....., 19...., personally appeared .....
..... and
.....
to me known to be the identical person..... who executed the within and foregoing instrument and acknowledged to me that ..... executed the same as ..... free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

My Commission Expires .....

..... Notary Public

EXHIBIT 27

In Stock and for Sale by
THE OLDS PRESS,
Tulsa, Okla.

STANDARD FORM 1939
An Exact Reproduction of the
Form Formerly Sponsored by the
NATURAL GASOLINE ASSOCIATION
OF AMERICA

CASINGHEAD GAS CONTRACT

This Agreement, Made and entered into this 15th day of August, 1952, by and between HUMBLE OIL & REFINING COMPANY, P. O. Box 2180, Houston, Texas, hereinafter referred to as "Seller" and EL PASO NATURAL GAS COMPANY, P. O. Box 1492, El Paso, Texas, hereinafter referred to as "Buyer".

WITNESSETH: WHEREAS, Seller owns and holds a certain valid and subsisting oil and gas mining lease covering the following described lands situate and being within the County of Lea, State of New Mexico, to-wit:

S. W. HARRISON LEASE: SW/4 of Section 25, T-24-S, R-36-E.

EDNA E. HUNTER LEASE: NW/4 of Section 24, T-24-S, R-36-E.

ADA E. THOMAS LEASE: S/2 of SE/4 of Section 23, T-24-S, R-36-E. W/2 of SW/4 of Section 24, T-24-S, R-36-E. and,

WHEREAS, Seller is operating the above described properties and certain wells on said lands are productive, or may be productive, in addition to oil, of what is termed casinghead gas, (it being understood that the term "casinghead gas" means gas issuing from oil wells whether produced from the same sand or strata from which the oil is produced or by the induction of gas with compressors or other

means for flowing the oil, and gas vaporized from oil after production), and Seller desires to sell the casinghead gas which may hereafter be produced from oil wells located on said premises; and,

WHEREAS, Buyer contemplates the construction of, or has in operation, a gasoline plant or plants in the vicinity of said property and desires to buy said casinghead gas for the purpose of manufacturing natural gasoline therefrom, and for other purposes;

NOW THEREFORE, in consideration of One Dollar ($1.00) paid by Buyer to Seller, receipt of which is hereby acknowledged, and other payments and covenants hereinafter specified, Seller hereby grants, bargains, sells, and agrees to deliver to Buyer and Buyer agrees to purchase and take from Seller, subject to the stipulations and conditions hereinafter specified, all casinghead gas now or hereafter produced from wells on the lands hereinafter described.

1—TRANSFER OF TITLE—Upon receipt of said casinghead gas by Buyer, title thereto shall pass to and vest in Buyer at the delivery place described herein without regard to the purpose for which said casinghead gas may thereafter be used by Buyer:

2—DELIVERY PLACE—The delivery of the casinghead gas shall be made at the casinghead of the wells and/or at any other point or points of separation of oil and gas by Seller.

3—DELIVERY DATE—The delivery and reception of said gas shall begin on or before October 1, 1952, and failure to accept and/or agree to pay for said gas by said date shall give Seller the right to cancel this contract any time thereafter before actual utilization begins by serving ten (10) days' written notice on Buyer.

4—PRICE—(a) Buyer shall pay Seller for the casinghead gas delivered hereunder a price per thousand cubic feet computed by multiplying the gasoline content per thousand cubic feet of gas, determined by test as provided in numbered paragraph 5, by the sales price per gallon of gasoline, hereinafter defined, and multiplying the result by the applicable "Percent" as shown in the schedule below.

The sales price per gallon shall be the average price for 26/70 natural gasoline, North Texas or equivalent, as quoted in the "National Petroleum News" for the settlement period.

Sales price of Gasoline in Cents per Gallon	Gasoline Content in Gallons per 1,000 Cubic Feet of Gas.												
	.0 to .25	.25 to .50	.50 to .75	.75 to 1.00	1.00 to 1.25	1.25 to 1.50	1.50 to 1.75	1.75 to 2.00	2.00 to 2.25	2.25 to 2.50	2.50 to 2.75	2.75 to 3.00	3.00 and above
	Percent												
0.5 to 1.0	5.	5.	5.	6.25	7.5	8.75	10.0	11.25	12.5	13.75	15.0	16.25	17.5
1.0 to 1.5	5.	5.	6.25	7.5	8.75	10.0	11.25	12.5	13.75	15.0	16.25	17.5	18.75
1.5 to 2.0	5.	6.25	7.5	8.75	10.0	11.25	12.5	13.75	15.0	16.25	17.5	18.75	20.0
2.0 to 2.5	6.25	7.5	8.75	10.0	11.25	12.5	13.75	15.0	16.25	17.5	18.75	20.0	21.25
2.5 to 3.0	7.5	8.75	10.0	11.25	12.5	13.75	15.0	16.25	17.5	18.75	20.0	21.25	22.5
3.0 to 3.5	8.75	10.0	11.25	12.5	13.75	15.0	16.25	17.5	18.75	20.0	21.25	22.5	23.75
3.5 to 4.0	10.0	11.25	12.5	13.75	15.0	16.25	17.5	18.75	20.0	21.25	22.5	23.75	25.0
4.0 to 4.5	11.25	12.5	13.75	15.0	16.25	17.5	18.75	20.0	21.25	22.5	23.75	25.0	27.0
4.5 to 5.0	12.5	13.75	15.0	16.25	17.5	18.75	20.0	21.25	22.5	23.75	25.0	27.0	29.0
5.0 to 5.5	13.75	15.0	16.25	17.5	18.75	20.0	21.25	22.5	23.75	25.0	27.0	29.0	31.0
5.5 to 6.0	15.0	16.25	17.5	18.75	20.0	21.25	22.5	23.75	25.0	27.0	29.0	31.0	33.3
6.0 to 6.5	16.25	17.5	18.75	20.0	21.25	22.5	23.75	25.0	27.0	29.0	31.0	33.3	33.3
6.5 to 7.0	17.5	18.75	20.0	21.25	22.5	23.75	25.0	27.0	29.0	31.0	33.3	33.3	33.3
7.0 to 7.5	18.75	20.0	21.25	22.5	23.75	25.0	27.0	29.0	31.0	33.3	33.3	33.3	33.3
7.5 and above	20.0	21.25	22.5	23.75	25.0	26.25	29.0	31.0	33.3	33.3	33.3	33.3	33.3

NOTE:—Each gasoline content and sales price division in the schedule above includes the smaller but excludes the larger figure.

Should any casinghead gas be delivered to Buyer by Seller at pressures adequate to process said gas through Buyer's plant directly and without the use of compression machinery by Buyer and Buyer's plant be equipped to handle such gas directly in said plant and should Buyer so utilize said gas, then the applicable "Percent" in the above schedule shall be increased by adding five (5) thereto, provided that in no such case shall the total percentage be more than 33.3%.

4-(b) Buyer shall have the right to take into its pipe line any surplus volume of residue gas, but as additional compensation for said casinghead gas, it is agreed that Buyer shall pay Seller for any of said surplus residue gas so taken into its line in accordance with the following schedule—(the unit of volume for the purpose of measurement of gas so taken shall be one (1) cubic foot at a base temperature of sixty (60)

N.G.A.A. Standard Table, adopted February 9, 1932, showing the per cent of casinghead gas returnable as residue after extraction and plant use as shown by Natural Gasoline Association of America residue gas curve.

G.P.M.	%RET.	G.P.M.	%RET.	G.P.M.	%RET.	G.P.M.	%RET.	G.P.M.	%RET.	G.P.M.	%RET.	G.P.M.	%RET.	G.P.M.	%RET.	G.P.M.	%RET.
.00	0	2.00	72.90	4.00	54.30	6.00	38.30	8.00	25.10	10.00	13.70	12 00	3.50	14.00	-6.20	16.00	-15.30
.05	93.10	2.05	72.45	4.05	53.85	6.05	37.90	8.05	24 80	10.05	13 35	12.05	3.25	14.05	-6.40	16.05	-15.55
.10	92.60	2.10	72.00	4.10	53.40	6.10	37.50	8.10	24.50	10.10	13.00	12.10	3.00	14.10	-6.60	16.10	-15.80
.15	92.10	2.15	71.50	4.15	52.95	6.15	37 20	8.15	24.25	10.15	12.75	12.15	2.75	14.15	-6.80	16.15	-16.05
.20	91.60	2.20	71.00	4.20	52.50	6.20	36.90	8.20	24.00	10.20	12.50	12.20	2.50	14.20	-7.00	16.20	-16.30
.25	91.05	2.25	70.50	4.25	52.15	6.25	36.55	8.25	23.65	10.25	12.25	12.25	2.30	14.25	-7.30	16.25	-16.55
.30	90.50	2.30	70.10	4.30	51.80	6 30	36.20	8.30	23.30	10.30	12.00	12.30	2.10	14.30	-7.60	16.30	-16.80
.35	90.05	2.35	69.60	4.35	51.30	6.35	35.80	8.35	22.95	10.35	11.75	12.35	1.85	14.35	-7 85	16.35	-17.00
.40	89.60	2.40	69.10	4.40	50.80	6.40	35.40	8.40	22.60	10.40	11.50	12.40	1.60	14.40	-8.10	16.40	-17.20
.45	89.00	2.45	68.65	4.45	50.40	6.45	35.10	8.45	22.30	10.45	11.25	12.45	1.40	14.45	-8.35	16.45	-17.30
.50	88.40	2.50	68.20	4 50	50.00	6.50	34.80	8.50	22.00	10.50	11.00	12.50	1.20	14.50	-8.60	16.50	-17.40
.55	87.85	2.55	67.70	4.55	49 65	6.55	34.45	8.55	21.70	10 55	10.75	12.55	.90	14.55	-8.85	16.55	-17.60
.60	87.30	2.60	67.20	4.60	49.30	6.60	34.10	8.60	21.40	10.60	10.50	12.60	.60	14.60	-9.10	16.60	-17.80
.65	86.80	2.65	66.70	4.65	48.85	6.65	33.80	8.65	21.10	10.65	10.25	12.65	.35	14.65	-9 30	16.65	-18 05
.70	86.30	2.70	66.20	4.70	48.40	6.70	33 50	8.70	20.80	10.70	10 00	12.70	.10	14.70	-9.50	16.70	-18.30
.75	85.75	2.75	65.75	4.75	47.95	6.75	33.15	8.75	20.55	10.75	9.75	12.75	-.20	14.75	-9.75	16.75	-18.55
.80	85.20	2.80	65.30	4.80	47.50	6.80	32.80	8.80	20.30	10.80	9.50	12.80	-.50	14.80	-10.00	16.80	-18.80
.85	84.70	2.85	64.90	4 85	47.15	6.85	32.50	8.85	20.05	10.85	9 25	12.85	-.75	14.85	-10.20	16.85	-19.00
.90	84.20	2.90	64.50	4.90	46.80	6.90	32.20	8.90	19.80	10.90	9:00	12.90	-1.00	14 90	-10.40	16.90	-19.20
.95	83.65	2.95	63.95	4.95	46.35	6.95	31.85	8.95	19.50	10.95	8.75	12.95	-1.20	14.95	-10.60	16.95	-19.35
1.00	83.10	3.00	63.40	5.00	45.90	7.00	31.50	9.00	19.20	11.00	8.50	13.00	-1.40	15.00	-10.80	17.00	-19.50
1.05	82.50	3.05	62 95	5.05	45.50	7.05	31.15	9.05	18.85	11.05	8.25	13.05	-1.65	15.05	-11.00	17.05	-19.75
1.10	81.90	3.10	62.50	5.10	45.10	7.10	30.80	9.10	18.50	11.10	8.00	13.10	-1.90	15.10	-11.20	17.10	-20.00
1.15	81.40	3.15	62.00	5.15	44.75	7.15	30.50	9.15	18.20	11.15	7 70	13.15	-2.15	15.15	-11.40	17.15	-20.25
1.20	80.90	3.20	61.50	5.20	44.20	7.20	30.20	9.20	17.90	11.20	7.40	13.20	-2.40	15 20	-11.60	17.20	-20.50
1.25	80.40	3.25	61.00	5.25	43.85	7.25	29.85	9.25	17.60	11.25	7.20	13.25	-2.60	15.25	-11.85	17.25	-20.75
1.30	79 90	3.30	60.50	5.30	43.50	7.30	29.50	9.30	17.30	11.30	7.00	13.30	-2.80	15.30	-12.11	17.30	-21.00
1.35	79.45	3.35	60.15	5.35	43.05	7.35	29.25	9.35	17.05	11.35	6.75	13.35	-3.05	15.35	-12.40	17.35	-21.15
1.40	79.00	3.40	59.80	5.40	42.60	7.40	29.00	9.40	16.80	11.40	6.50	13.40	-3.30	15.40	-12.70	17.40	-21.30
1.45	78.50	3.45	59.30	5.45	42.25	7.45	28.65	9.45	16.50	11.45	6.25	13.45	-3.55	15.45	-12.90	17.45	-21.55
1.50	78.00	3.50	58.80	5.50	41.90	7.50	28.30	9.50	16.20	11.50	6.00	13.50	-3.80	15.50	-13.10	17.50	-21.80
1.55	77.50	3.55	58.35	5.55	41.55	7.55	28.00	9.55	16.00	11.55	5.80	13.55	-4.00	15.55	-13.30	17.55	-21.95
1.60	77.00	3.60	57.90	5.60	41.20	7.60	27.70	9.60	15.80	11.60	5.60	13.60	-4.20	15.60	-13.50	17.60	-22.10
1.65	76.50	3.65	57.40	5.65	40.80	7.65	27.30	9.65	15.50	11.65	5.35	13.65	-4.45	15.65	-13.75	17.65	-22.25
1.70	76.00	3.70	56.90	5.70	40.40	7.70	26.90	9.70	15.20	11.70	5.10	13.70	-4.70	15.70	-14.00	17.70	-22.40
1.75	75.50	3.75	56.55	5.75	40.15	7.75	26.70	9.75	14.95	11.75	4.85	13.75	-4.95	15.75	-14.20	17.75	-22.80
1.80	75.00	3.80	56.20	5.80	39.90	7.80	26.50	9.80	14.70	11.80	4.60	13.80	-5.20	15.80	-14.40	17.80	-23.00
1.85	74.50	3.85	55.75	5.85	39.50	7.85	26.20	9.85	14.45	11.85	4.35	13.85	-5.55	15.85	-14.65	17.85	-23.25
1.90	74.00	3.90	55.30	5.90	39.10	7.90	25.90	9.90	14.20	11.90	4.10	13.90	-5.90	15.90	-14.90	17.90	-23.50
1.95	73.45	3.95	54.80	5.95	38.70	7.95	25.50	9.95	13.95	11.95	3.80	13.95	-6.05	15.95	-15.10	17.95	-23.70

degrees Fahrenheit, and at a base pressure of fourteen and sixty-five hundredths pounds (14.65#) per square inch absolute, measurement to be in accordance with Committee Report No. 2 of the American Gas Association as amended, with correction being made for deviation from Boyle's Law).

1. For surplus residue gas from casinghead gas produced from producing formations encountered at a depth of four thousand (4,000) feet or less from the surface of the land, an amount equal to fifty percent (50%) of:

   (A) For all gas taken prior to January 1, 1953, five and one-half cents (5½¢) for each one thousand (1,000) cubic feet.

   (B) For all gas taken during the five (5) year period January 1, 1953 to December 31, 1957, seven cents (7¢) for each one thousand (1,000) cubic feet;

   (C) For all gas taken during the five (5) year period January 1, 1958 to December 31, 1962, eight cents (8¢) for each one thousand (1,000) cubic feet; and

   (D) For all gas taken during the five (5) year period January 1, 1963 to December 31, 1967, nine cents (9¢) for each one thousand (1,000) cubic feet; and

   (E) For all gas taken during the period beginning January 1, 1968, and until this contract is terminated, the prevailing market price for residue gas in the field at the commencement of such period. If it is impossible for Seller and Buyer to agree upon a price, then the price shall be determined by arbitration as hereinafter provided.

2. For any surplus residue gas taken into Buyer's line when such surplus residue gas is from casinghead gas taken from producing formations encountered at a depth greater than four thousand (4,000) feet from the surface of the land, an amount equal to:

(A) For all gas taken during the five (5) year period January 1, 1953 to December 31, 1957, five and one-half cents (5½¢) for each one thousand (1,000) cubic feet;

(B) For all gas taken during the five (5) year period January 1, 1958 to December 31, 1962, six and one-half (6½¢) for each one thousand (1,000) cubic feet; and

(C) For all gas taken during the five (5) year period January 1, 1963 to December 31, 1967, seven and one-half cents (7½¢) for each one thousand (1,000) cubic feet; and

(D) For all gas taken during the period beginning January 1, 1968, and until this contract is terminated, the prevailing market price for residue gas in the field at the commencement of such period. If it is impossible for Seller and Buyer to agree upon a price, then the price shall be determined by arbitration as hereinafter provided.

The total quantity of gas taken into Buyer's pipeline, and to be paid for by Buyer as above provided, shall be allocated to each Seller in the proportion that the quantity of gas furnished by the Seller under this contract bears to the total quantity of gas furnished by all Sellers under similar contracts, due consideration being given to the depths of formations from which all such gas is produced.

4-(c) ADDITIONAL PRODUCTS. Buyer desires to extract, condense, and save certain additional petroleum products, i.e. butanes and propane, such operation being hereby specifically authorized, and for the purpose of more efficiently performing such operations, Buyer has installed or may install additional equipment at its plant. Upon beginning such operation and continuing during the period or periods such products are saved and sold, Buyer shall, in lieu of all obligations, if any, imposed by the other provisions of this contract with reference to said additional products compensate Seller for the rights herein granted by paying Seller, in addition to the sums of money otherwise provided to be paid under this contract, the following sums computed at a price per thousand cubic feet for casinghead gas delivered hereunder, to wit:

(A) When the quantity of such additional products as determined below is less than .75 gallons per thousand cubic feet:

(a) 5% of the sales value of the butane and/or propane when the price is less than 2¢ per gallon.

(b) 10% of the sales value of the butane and/or propane when the price is 2¢ but less than 4¢ per gallon.

(c) 15% of the sales value of the butane and/or propane when the price is 4¢ but less than 6¢ per gallon.

(d) 20% of the sales value of the butane and/or propane when the price is 6¢ per gallon or more.

(B) When the quantity of such additional products as determined below is .75 gallons per thousand cubic feet, but less than 1.75 gallons per thousand cubic feet:

(a) 10% of the sales value of the butane and/or propane when the price is less than 2¢ per gallon.

(b) 15% of the sales value of the butane and/or propane when the price is 2¢ but less than 4¢ per gallon.

(c) 20% of the sales value of the butane and/or propane when the price is 4¢ but less than 6¢ per gallon.

(d) 25% of the sales value of the butane and/or propane when the price is 6¢ per gallon or more.

(C) When the quantity of such additional products as determined below is 1.75 gallons per thousand cubic feet, or above:

(a) 15% of the sales value of the butane and/or propane when the price is less than 2¢ per gallon.

(b) 20% of the sales value of the butane and/or propane when the price is 2¢ but less than 4¢ per gallon.

(c) 25% of the sales value of the butane and/or propane when the price is 4¢ but less than 6¢ per gallon.

(d) 33⅓% of the sales value of the butane and/or propane when the price is 6¢ per gallon or more.

The "sales value" of such products shall be the sales price at the plant; but if no sales price at the plant for such products is fixed, then the market value at the plant of such products shall control.

The additional products actually saved and sold from Buyer's plant attributable to casinghead gas delivered by Seller to Buyer under this contract, for

the purposes of this computation, shall be that percentage of such additional products actually saved and sold from Buyer's plant which the quantity of casinghead gas delivered by Seller to Buyer's plant bears to the total quantity of casinghead gas delivered to Buyer's plant. By the term "additional products" is meant all butanes and propane liquefied, saved and sold after deducting the quantity of butanes and propane, if any, included in natural gasoline manufactured at Buyer's plant, except that, when gasoline of a vapor pressure lower than 26 pounds Reid is being manufactured or when mixtures of natural gasoline, butanes and propane are being manufactured, the term "additional products" shall mean all butanes and propane liquefied, saved and sold (whether in mixture or separated) after deducting the calculated quantity of butanes which would be required to manufacture gasoline having a Reid vapor pressure of 26 pounds at such plant (such butanes and propane to be so deducted hereunder being already considered in the settlement provided for in paragraph 4-(a) and 4-(c) of this contract). The term "sold" as used in this paragraph shall include such products as are actually removed from said plant and utilized by Buyer for blending or processing purposes.

5—GASOLINE CONTENT AND SPECIFIC GRAVITY —The gasoline content shall be determined by a field compression test or charcoal adsorption test, at Seller's option, made in accordance with the official code of the Natural Gasoline Association of America for testing natural gas for gasoline content. The gas used in the content tests shall be measured in cubic feet and computed on the basis of four (4) ounces above a pressure of 13.2 pounds per square inch absolute and at a base temperature of sixty (60) degrees Fahrenheit. The test results shall be expressed in terms of gallons per thousands cubic feet. The specific gravity of the casinghead gas delivered

hereunder shall be determined by any method adopted as standard by the Natural Gasoline Association of America.

The tests for gasoline content and specific gravity of the gas shall be made by Buyer quarterly except when, in the opinion of either party, a change in producing conditions or method of operations of the lease will affect materially the gasoline content and specific gravity of the gas, in which event the tests shall be made at the demand of either party upon five (5) days' notice to the other party. Buyer shall notify Seller in writing ten (10) days previous to the quarterly tests in order that it may have a representative present to witness said tests and/or make joint tests with its own appliances.

6—MEASUREMENT OF VOLUMES DELIVERED—The casinghead gas delivered hereunder shall be measured by a suitable orifice meter, or meters, of standard make to be furnished, installed and kept in repair by Buyer on the lease herein covered. The amount of gas so metered shall be computed in cubic feet on the basis of four (4) ounces above a pressure of 13.2 pounds per square inch absolute at a base temperature of sixty (60) degrees Fahrenheit and at an assumed flowing temperature of 60 degrees Fahrenheit. Buyer shall test, and if necessary adjust and repair, said meter, or meters, at or about the time the tests for gasoline content are made. Said meter, or meters shall be open to inspection at all times by Seller in the presence of Buyer. In case any question arises as to the accuracy of the measurement said meter, or meters, shall be tested upon the demand of either party. The expense of such tests shall be borne by the party demanding same if the meter is found to be correct, and by Buyer if found incorrect. A registration within 3% of correct shall be considered correct. Settlement for any period of inoperation or inaccurate measurement shall be in accordance with the average readings taken during the last preceding

ten (10) days when the meter was registering accurately and the first ten (10) days after the meter was restored to accuracy. If requested Buyer shall send the charts to Seller for checking after which they are to be returned to Buyer.

7—ROYALTY—Seller agrees to account and pay to the lessors or royalty owners in the lease above described, in strict accordance with the provisions thereof, the royalty on the casinghead gas sold and delivered hereunder to Buyer.

8—PAYMENT—Payment shall be made by Buyer not later than the 20th day of each month for all casinghead gas purchased hereunder during the preceding month, and at the time payment is made a statement showing full details of the accounts shall be transmitted to Seller accompanying Buyer's check in payment therefor. Examination by Seller of the books of account kept by Buyer respecting said gas account shall be permitted by Buyer at any and all reasonable hours.

9—TITLE WARRANTY—Seller warrants its title to said gas and that it has good right to sell said gas to Buyer but Buyer shall not be required to make payments until Seller shall have submitted abstracts of title covering said leasehold showing good and merchantable title in it and that it has good right to sell said casinghead gas, all to the satisfaction of the attorneys of Buyer; provided, however, if the title of Seller is questioned, or involved in any action, Buyer shall have the right to withhold payment during the pendency of such action or until said title is freed from such question, or until Seller furnishes bond conditioned to save Buyer harmless with surety acceptable to Buyer.

10—RESIDUE GAS—Buyer shall deliver to the nearest boundary line of Seller's lease, above described, sufficient residue or other gas for the development and operation of said lease, not to exceed at any time an

amount equal to the residue gas remaining from the casinghead gas concurrently delivered to Buyer from said lease, after the extraction of gasoline therefrom, less the residue gas necessary for plant operation, determined by multiplying said casinghead gas volume by the applicable percentage as shown in the following table, and less the loss on account of extraction of other products, if extracted.

Buyer shall not be required to return such gas at a delivery pressure in excess of sixty pounds (60#) per square inch gauge.

In lieu of delivery of residue gas as above described, Buyer shall have the right to require Seller to take from said casinghead gas before delivery to Buyer that quantity of gas required by Seller for operation of said lease.

Percentage of Casinghead Gas Remaining as Residue after Extraction of Gasoline and Plant use Based upon Gasoline Content in Gallons per 1,000 Cubic Feet (G. P. M.).

G.P.M.	%	G.P.M.	%	G.P.M.	%	G.P.M.	%	G.P.M.	%	G.P.M.	%	G.P.M.	%	G.P.M.	%
00	0	1.50	78.00	3.00	63.40	4.50	50.00	6.00	38.50	7.50	28.30	9.00	19.20	10.50	11.00	12.00	3.50
.05	93.10	1.55	77.50	3.05	62.95	4.55	49.65	6.05	37.90	7.55	28.00	9.05	18.85	10.55	10.75	12.05	3.25
.10	92.60	1.60	77.00	3.10	62.50	4.60	49.30	6.10	37.50	7.60	27.70	9.10	18.50	10.60	10.60	12.10	3.00
.15	92.10	1.65	76.50	3.15	62.00	4.65	48.85	6.15	37.20	7.65	27.30	9.15	18.20	10.65	10.25	12.15	2.75
.20	91.50	1.70	76.00	3.20	61.50	4.70	48.40	6.20	36.90	7.70	26.90	9.20	17.90	10.70	10.00	12.20	2.50
.25	91.05	1.75	75.50	3.25	61.00	4.75	47.95	6.25	36.55	7.75	26.70	9.25	17.60	10.75	9.75	12.25	2.30
.30	90.50	1.80	75.00	3.30	60.50	4.80	47.50	6.30	36.20	7.80	26.50	9.30	17.30	10.80	9.50	12.30	2.10
.35	90.05	1.85	74.50	3.35	60.15	4.85	47.15	6.35	35.80	7.85	26.20	9.35	17.05	10.85	9.25	12.35	1.85
.40	89.60	1.90	74.00	3.40	59.80	4.90	46.80	6.40	35.40	7.90	25.90	9.40	16.80	10.90	9.00	12.40	1.60
.45	89.00	1.95	73.45	3.45	59.30	4.95	46.35	6.45	35.10	7.95	25.50	9.45	16.50	10.95	8.75	12.45	1.40
.50	88.40	2.00	72.90	3.50	58.80	5.00	45.90	6.50	34.80	8.00	25.10	9.50	16.20	11.00	8.50	12.50	1.20
.55	87.85	2.05	72.45	3.55	58.35	5.05	45.50	6.55	34.45	8.05	24.80	9.55	16.00	11.05	8.25	12.55	.90
.60	87.30	2.10	72.00	3.60	57.90	5.10	45.10	6.60	34.10	8.10	24.50	9.60	15.80	11.10	8.00	12.60	.80
.65	86.80	2.15	71.50	3.65	57.40	5.15	44.75	6.65	33.80	8.15	24.25	9.65	15.50	11.15	7.70	12.65	.55
.70	86.30	2.20	71.00	3.70	56.90	5.20	44.20	6.70	33.50	8.20	24.00	9.70	15.20	11.20	7.40	12.70	.10
.75	85.75	2.25	70.50	3.75	56.55	5.25	43.85	6.75	33.15	8.25	23.65	9.75	14.95	11.25	7.20	—	—
.80	85.20	2.30	70.10	3.80	56.20	5.30	43.50	6.80	32.80	8.30	23.30	9.80	14.70	11.30	7.00	—	—
.85	84.70	2.35	69.60	3.85	55.75	5.35	43.05	6.85	32.50	8.35	22.95	9.85	14.45	11.35	6.75	—	—
.90	84.20	2.40	69.10	3.90	55.30	5.40	42.60	6.90	32.20	8.40	22.60	9.90	14.20	11.40	6.50	—	—
.95	83.65	2.45	68.65	3.95	54.80	5.45	42.25	6.95	31.85	8.45	22.30	9.95	13.95	11.45	6.25	—	—
1.00	83.10	2.50	68.20	4.00	54.30	5.50	41.90	7.00	31.50	8.50	22.00	10.00	13.70	11.50	6.00	—	—
1.05	82.50	2.55	67.70	4.05	53.85	5.55	41.55	7.05	31.15	8.55	21.70	10.05	13.35	11.55	5.80	—	—
1.10	81.90	2.60	67.20	4.10	53.40	5.60	41.20	7.10	30.80	8.60	21.40	10.10	13.00	11.60	5.60	—	—
1.15	81.40	2.65	66.70	4.15	52.95	5.65	40.80	7.15	30.50	8.65	21.10	10.15	12.75	11.65	5.35	—	—
1.20	80.90	2.70	66.20	4.20	52.50	5.70	40.40	7.20	30.20	8.70	20.80	10.20	12.50	11.70	5.10	—	—
1.25	80.40	2.75	65.75	4.25	52.15	5.75	40.15	7.25	29.85	8.75	20.55	10.25	12.25	11.75	4.85	—	—
1.30	79.90	2.80	65.30	4.30	51.80	5.80	39.90	7.30	29.50	8.80	20.30	10.30	12.00	11.80	4.60	—	—
1.35	79.45	2.85	64.90	4.35	51.30	5.85	39.50	7.35	29.25	8.85	20.05	10.35	11.75	11.85	4.35	—	—
1.40	79.00	2.90	64.50	4.40	50.80	5.90	39.10	7.40	29.00	8.90	19.80	10.40	11.50	11.90	4.10	—	—
1.45	78.50	2.95	63.95	4.45	50.40	5.95	38.70	7.45	28.65	8.95	19.50	10.45	11.25	11.95	3.80	—	—

In the event the gas to be delivered hereunder by Buyer to Seller's lease shall be insufficient in quantity for the purpose of developing and operating said

lease, Seller hereby reserves the right to use casinghead gas from its lease sufficient in quantity to make up the deficiency. Utilization of gas delivered by Buyer to Seller hereunder for lease operations shall be at Seller's risk. If Seller desires gas delivered at a pressure in excess of that resulting from normal plant operations, Buyer shall not be required to do so except upon voluntary agreement between the parties as to the terms and price to be paid therefor.

11—PRIORITY RIGHTS OF SELLER—As said premises are being operated primarily for the production of oil, Seller may use any method therefor, and the taking of casinghead gas by Buyer shall be subservient to said oil operations. Seller may at any time and without liability to Buyer, clean out, deepen, or abandon any well, on the above-described properties. However, before any well is taken out of service for any reason, Seller agrees to shut off the same from communication with Buyer's gas lines.

Seller hereby specifically reserves the right to introduce air, gas, or any other extraneous substance into any well covered hereby, or into the sand or sands from which any well is producing when, in the exclusive judgment of Seller, the introduction of such substances is desirable for the production of oil, provided that, in the exclusive judgment of Buyer, should the Seller's operations under this paragraph create a condition which makes the taking and utilization of casinghead gas from any well unprofitable to Buyer, or dangerous to the plant or property of Buyer, or the lives of Buyer's employees, then Buyer, at its election, may discontinue taking said casinghead gas from the particular well or wells while such condition exists.

12—UNPROFITABLE GAS—Buyer agrees to take all the gas testing more than 6/10 gallons of gasoline per thousand cubic feet of gas; provided that during flush casinghead gas production from the property covered hereby Buyer shall only be obligated to take

ratably as to quantity with all other flush production connected to its plant. Seller shall have the right to dispose of any gas not taken or paid for by Buyer; provided that Buyer shall have the right to take any or all of such gas at any time thereafter conditioned upon Buyer giving Seller at least 30 days' notice of its election to do so. In the event the casinghead gas from any well or wells, or from any point of separation of the oil and gas, on said lease becomes insufficient in volume or gasoline content, or for any other cause becomes unprofitable for the extraction of gasoline therefrom, Buyer shall have the right to cease taking such gas so long as such condition exists. It is further provided that if at any time the volume and/or gasoline content of the gas available to Buyer, or if any cause beyond its control, shall render the construction and/or operation of said plant unprofitable, Buyer may, by thirty (30) days' written notice and payment, or tender, to Seller of Ten Dollars ($10.00), cancel this contract.

13—VACUUM—Upon request of Seller, Buyer shall apply and maintain on Seller's wells a vacuum substantially equal to that maintained on offset wells by gasoline plants. Up to such maximum Seller shall have control of said vacuum at all times.

14—DRIP—Buyer shall keep reasonably clear of obstruction all its pipe lines through which said gas is being delivered and shall own all liquid collected in such lines.

15—REGULATORY BODIES—This contract shall be subject to all the laws, rules and regulations of any duly constituted federal, state or other governmental agency having jurisdiction herein.

16—RIGHT OF WAY—Insofar as Seller's lease permits, Buyer is granted the right to lay and maintain lines and to install any necessary equipment on said lease and shall have the right to free entry for any purpose

incidental to gasoline plant operations so long as such purpose does not interfere with lease operations or the rights of owners in fee. All lines and other equipment placed by Buyer on said lands shall remain the property of Buyer, and, subject to the terms of this contract, may be removed by Buyer at any time.

17—SCOPE—In the event the property above described covers more than one lease, this contract shall be construed as a separate contract on each lease.

18—CASUALTY—Any failure of either party hereto to perform any of the obligations hereunder shall be excused if such failure is due to fires, strikes, floods, lack of water, winds, lightning, accidents or any circumstances beyond the control of the party failing to perform.

19—INDEMNITY—Buyer shall indemnify and hold Seller harmless against any claims for damages growing out of the operations conducted hereunder by Buyer. Likewise Seller shall indemnify and hold Buyer harmless against any claims for damages growing out of Seller's operations of the lease herein described.

20—ARBITRATION—In the event of any dispute or controversy between the parties hereto involving the operations under this contract same shall be settled by arbitration. Each of the parties shall appoint an arbitrator and the two appointed shall select a third. The award of any two arbitrators shall be conclusive upon the parties and shall be made within thirty (30) days after the appointment of the first arbitrator.

21—TERM—This contract shall remain in effect for the life of the oil and gas lease of Seller on said premises or any extension or renewal thereof, provided that either party shall have the right to terminate this contract at the expiration of ten (10) years from the date hereof or on any anniversary of said date thereafter by giving the other party thirty (30) days'

notice, in writing, of its intention so to do, after which each party shall be released from all further liability hereunder.

22—ASSIGNMENT—This contract shall extend to and be binding upon the parties hereto, their heirs, administrators, successors and assigns, but no transfer of or succession to the interest of Seller hereunder, wholly or partially, shall affect or bind Buyer until it shall have been furnished at the office of Buyer in the City of El Paso, Texas, with the original instrument or with proper proof that the claimant is legally entitled to such interest.

IN WITNESS WHEREOF the parties have hereunto subscribed their names.

APPROVED

Attest: ELIZABETH H. KENNEY
Assistant Secretary

HUMBLE OIL & REFINING COMPANY
C. E. REISTLE, JR.
Seller
Director in Charge,
Production Department

Attest:
V. M. BENNERS
Assistant Secretary

EL PASO NATURAL GAS COMPANY
D. H. TUCKER
Buyer
Vice-President

GENERAL FORMS FOR ACKNOWLEDGMENT

Applicable in Oklahoma, Kansas, Arkansas, Texas and New Mexico

CORPORATE FORM

STATE OF_____ } ss.
COUNTY OF_____ }

Before me, the undersigned authority, on this day personally appeared_____of_____, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the free act and deed of the said _____, a corporation, and that he having been duly authorized by the board of directors of said corporation, executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office at_____ this the_____day of_____, A.D., 19_____

My Commission Expires_____

_____

Notary Public in and for_____ County,_____

CORPORATE FORM

STATE OF TEXAS }
COUNTY OF HARRIS } ss.

Before me, the undersigned authority on this day personally appeared C. E. Reistle, Jr., Director in Charge Prod. Dept. of Humble Oil & Refining Co., known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the free act and deed of the said Humble Oil & Refining Co., a corporation, and that he having been duly authorized by the board of directors of said corporation, executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office at Houston this the 23rd day of Sept., A.D., 1952.

Virgil E. Cammack
Notary Public in and for
Harris County, Texas

My Commission Expires 6-1-53.

INDIVIDUAL FORM

STATE OF_____ }
COUNTY OF_____ } ss.

Before me, the undersigned, a Notary Public, in and for said County and State, on this_____day of_____, 19_____, personally appeared_____

_____and

_____

to me known to be the identical person___ who executed the within and foregoing instrument and acknowledged to me that_____executed the same as_____free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

_____Notary Public

My Commission Expires_____

No._____ Standard Form Revised

CASINGHEAD GAS CONTRACT

FROM

_____

_____

TO

_____

_____

Dated _____, 19____

Lot _____ Block _____ Addition _____

Section _____ Township _____ Range _____

_____ County, _____

No. of Acres _____ Term _____

STATE OF _____
COUNTY OF _____ } ss.

This instrument was filed for record on the _____ day of _____, 19____, at _____ o'clock _____ M., and duly recorded in Book _____, Page _____ of the records of this office.

_____

County Clerk—Register of Deeds

By _____

Deputy.

When Recorded

Return to _____

_____

These blanks printed by The Olds Press, Tulsa, Okla., U.S.A.
215 East Third Street, one-half block east of Hotel Tulsa
Phone 4-9423. Mail or phone orders filled same hour received.
Write for our complete Catalog of Oil Field Forms

EL PASO NATURAL GAS COMPANY
Tenth Floor Bassett Tower
El Paso, Texas

Address Reply To:
1006 Main St., Room 1901
Houston 2, Texas

June 30, 1954

Humble Oil & Refining Company
P. O. Box 2180
Houston, Texas

Gentlemen:

By agreement dated August 15, 1952, we entered into an agreement with you covering the purchase and sale of casinghead gas from certain of your properties in Lea County, New Mexico, as more particularly described in said agreement. This letter, when accepted by you in the space provided below, will constitute an agreement between us further amending the above referred to casinghead gas agreement of August 15, 1952, as follows:

Effective June 1, 1954, Paragraph 4(b) is deleted in its entirety and the following substituted therefor:

"Buyer shall have the right to take into its pipe line any surplus volume of residue gas, but as additional compensation for said casinghead gas, it is agreed that Buyer shall pay Seller for any of said surplus residue gas so taken into its line in accordance with the following schedule — (the unit of volume for the purpose of measurement of gas so taken shall be one (1) cubic foot at a base temperature of sixty (60) degrees Fahrenheit, and at a base pressure of fourteen and sixty-five hundredths pounds (14.65#) per

square inch absolute, measurement to be in accordance with Committee Report No. 2 of the American Gas Association, as amended, with correction being made for deviation from Boyle's Law):

(A) For the period from June 1, 1954, to December 31, 1957, five and one-half cents (5½¢) for each one thousand (1,000) cubic feet;

(B) For the five (5) year period from January 1, 1958, to December 31, 1962, six and one-half cents (6½¢) for each one thousand (1,000) cubic feet; and

(C) For the five (5) year period from January 1, 1963, to December 31, 1967, seven and one-half cents (7½¢) for each one thousand (1,000) cubic feet; and

(D) For the period beginning January 1, 1968, and until this contract is terminated, (1) sixty percent (60%) of the prevailing market price for residue gas in the field at the commencement of such period, or (2) eight and one-half cents (8½¢) for each one thousand (1,000) cubic feet, whichever (1) or (2) is higher. If it is impossible for Seller and Buyer to agree upon a price, then the price shall be determined by arbitration as hereinafter provided.

The total quantity of gas taken into Buyer's pipe line, and to be paid for by Buyer as above provided, shall be allocated to each Seller in the proportion that the quantity of gas furnished by the Seller under this contract bears to the total quantity of gas furnished by all Sellers under similar contracts."

As herein specifically supplemented and modified said casinghead contract of August 15, 1952, shall remain in full force and effect.

If the above is in accordance with your understanding, please indicate your acceptance thereof by signature on two of the attached copies of this letter, returning such copies to us for our files.

Very truly yours,

EL PASO NATURAL GAS COMPANY

By /s/ D. H. Tucker
D. H. Tucker—*Vice President*

HUMBLE OIL & REFINING COMPANY
By C. E. REISTLE, JR.
Director in Charge
Production Department

EXHIBIT 28
File: 35742 JHS:hc
Humble Exhibit #6
For Iden.

GAS DIVISION ORDER

May 24, 1946

TO: Phillips Petroleum Company,
Bartlesville, Oklahoma,

The undersigned, and each of them, certify and warrant that they are the legal owners in the proportions set out below of all of the gas produced from Bryse Lease, described as follows:

Tract One: 7.39 acres of Lot 4, Block 3, Wilson Subdivision — Gulf-Jenkins Lease;

Tract Two: 7.35 acres of Lot 2, Fox Winnie Subdivision — Gulf-McBride Lease;

Tract Three: 4.36 acres of Lot 1, Fox Winnie Subdivision — Gulf-McCormick Lease;

Tract Four: 2.60 acres of Lot 3, Fox Winnie Subdivision — Standard of Kansas-Smith Lease;

Tract Five: 1.48 acres of Lot 4, Block 3, Wilson Subdivision — Humble Oil & Refg. Co. Fee;

Tract Six: 16.80 acres of Lots 5 and 6, Block 3, Wilson Subdivision — Phillips-Phelan Lease;

Stowall Field, Chambers County, State of Texas and until further notice you will give credit for said gas sold from said lease, as per directions below:

Credit To	Division of Interest	P. O. Address
TRACT ONE: Jenkins 7.39 acres		
	Royalty Interest	
Steve Jenkins	.004619 R.I.	6027 Avenue S Galveston, Texas
R. G. Jenkins	.004619 R.I.	Box 106, Mexia, Texas
Mrs. Elizabeth J. Gieso	.004618 R.I.	Lake Jackson, Texas
Mrs. Wanda J. McAdams and husband, O. E. McAdams	.004619 R.I.	c/o First National Bank, Beaumont, Texas
Mrs. Rose J. Cummings	.004618 R.I.	Somerville, Texas
	Working Interest	
The Standard Oil Company of Kansas	.032332 W.I.	Houston, Texas
Gulf Oil Corporation	.129325 W.I.	Houston 1, Texas
TRACT TWO: McBride 7.35 acres		
	Royalty Interest	
William C. McBride	.011484 R.I.	Winnie, Texas
Theodore W. Koch	.004307 R.I.	c/o Walter R. Koch, 905 Nixon Bldg. Corpus Christi, Texas
Walter R. Koch	.004306 R.I.	905 Nixon Bldg., Corpus Christi, Texas
McCarthy Oil & Gas Corporation	.000718 R.I.	6th Fl. Shell Bldg., Houston 2, Tex.

Credit To	Division of Interest	P. O. Address
Second National Bank of Houston, Trustee, Account #424	.000718 R.I.	Houston, Texas
Phillips Petroleum Company	.001436 R.I.	
	Working Interest	
Gulf Oil Corporation	.160781 W.I.	
TRACT THREE:	McCormick 4.38 acres	
	Royalty Interest	
Mrs. Callie McCormick	.003422 R.I.	1075 Clader Ave., Beaumont, Texas
McCarthy Oil & Gas Corporation	.000427 R.I.	
Second National Bank of Houston, Trustee, Account #424	.000428 R.I.	
Mrs. Florence H. Koch	.002567 R.I.	305 Pioneer Bldg., St. Paul, Minn.
N. Paul Delander	.000570 R.I.	First National Bank Building, St. Paul, Minn.
Mrs. Helen Baird	.000285 R.I.	c/o J. B. Baird, First National Bank, St. Paul, Minn.
Theodore W. Koch	.002567 R.I.	
Walter R. Koch	.002567 R.I.	
Phillips Petroleum Company	.000855 R.I.	
	Working Interest	
Gulf Oil Corporation	.095812 W.I.	

Credit To	Division of Interest	P. O. Address
TRACT FOUR: Standard Oil Company of Kansas, 2.60 acres		
	Royalty Interest	
Tony Tortoris	.004063 R.I.	Route 3, Box 760-A, Beaumont, Texas
Mrs. Mamie V. Smith	.004062 R.I.	1998 Broadway, Beaumont, Texas
	Working Interest	
The Standard Oil Company of Kansas	.056875 W.I.	
TRACT FIVE: Humble Oil & Refining Company — fee 1.48 acres		
Humble Oil & Refining Company	8/8ths (.037000)	
TRACT SIX: Phelan 16.80 acres		
	Royalty Interest	
J. H. Phelan	.017500 R.I.	Box 1951, Beaumont, Texas
J. H. Phelan, Jr.	.017500 R.I.	Box 1951, Beaumont, Texas
A. M. Phelan	.017500 R.I.	Box 1951, Beaumont, Texas
Mrs. Randolph C. Reed	.017500 R.I.	Box 1951, Beaumont, Texas

Credit To	Division of Interest	P. O. Address
	Overriding Royalty Interest	
McCarthy Oil & Gas Corporation	.003281 O.R.R.I.	
Second National Bank of Houston, Trustee, Account #424	.003281 O.R.R.I.	
Phillips Petroleum Company	.006563 O.R.R.I.	
Earl C. Hankamer	.003190 O.R.R.I.	
Curtis Hankamer	.000354 O.R.R.I.	
A. C. Sorelle	.002067 O.R.R.I.	
Coastal Oil Finding Company	.005742 O.R.R.I.	
Harry Lucas and H. E. Dishman	.001772 O.R.R.I.	
	Working Interest	
J. H. Phelan*	.004375 W.I.	
J. H. Phelan, Jr.*	.004375 W.I.	
A. M. Phelan*	.004375 W.I.	
Mrs. Randolph C. Reed*	.004375 W.I.	
McCarthy Oil & Gas Corporation	.076562 W.I.	
Second National Bank of Houston, Trustee, Account #424	.076563 W.I.	
Phillips Petroleum Company	.153125 W.I.	

* Until the out of production payment due J. H. Phelan, et al is paid and thereafter, these interests revert to Phillips Petroleum Company and to Glenn H. McCarthy in equal proportions.

Phillips Petroleum Company or any of its subsidiary companies is hereby authorized to purchase the gas belonging to the above named owners and/or to sell and deliver such gas to the same party or parties to whom Phillips Petroleum Company shall sell its interest in gas from said lease.

1. Settlement for gas purchased by Phillips Petroleum Company or subsidiary shall be made to the owners of such gas, their assigns or successors in interest, in proportion to their respective interests, as shown above, at the prevailing market rate at the mouth of the well in the field in which this lease is located.

2. In the event of sale of gas, Phillips Petroleum Company shall have the right to receive payment therefor and the owners of such gas, their assigns or successors in interest, in proportion to their respective interests, as shown above, shall be paid for such gas at the same price received by Phillips Petroleum Company therefor at the well, and such gas shall become and be the property of the party to whom it is sold by Phillips Petroleum Company, as and when received by the purchaser into his custody.

3. Settlement for all gas purchased or sold shall be made at Bartlesville, Oklahoma, by mailing or delivering to the respective owners, as above set out, their assigns or successors in interest, check or draft of Phillips Petroleum Company or subsidiary; payment for gas purchased during each calendar month shall be made on or before the 25th day of the succeeding calendar month, and payment for gas sold shall be made within ten days after receipt by Phillips Petroleum Company of payment for such gas from the purchaser. It is agreed that if, at any settlement date, the amount payable to any party hereunder shall be less than

$5.00, Phillips Petroleum Company or subsidiary may withhold payment until the amount payable to such party equals or exceeds the sum of $5.00, at which time payment shall be made at the next regular settlement date. Upon termination of this agreement payments shall be made to the respective parties entitled thereto regardless of the amount or amounts due.

PAGE 2

GAS DIVISION ORDER

4. It is understood and agreed, in case of adverse claim of title to the land from which any such gas may be produced or adverse claim of title to any gas sold and purchased in pursuance of this division order, Phillips Petroleum Company shall be protected against all reasonable cost and expense necessarily incurred in defending against such claim, and may retain the purchase price or proceeds of such gas, without interest, until such adverse claim is fully settled and determined.

5. This division order shall become valid and binding on each and every owner above named as soon as signed by him or her, regardless of whether or not any of the other above named owners shall have so signed, and shall be binding upon the undersigned, their assigns and successors in interest, and shall inure to the benefit of Phillips Petroleum Company, its successors and assigns.

WITNESS:

SJ

RGJ

EJG

WJMcA

GEMcA

RJC

ATTEST:

THE STANDARD OIL COMPANY OF KANSAS

BY

ATTEST:

GULF OIL CORPORATION

BY

WCMcB

TWK

WRK

ATTEST:

McCARTHY OIL & GAS CORPORATION

BY

BY

ATTEST:

SECOND NATIONAL BANK OF HOUSTON, TRUSTEE
ACCT. #424

BY

BY

CMcM

FHK

MPD

HB

WRK

TT

A-943 6-42 D4101

THE STATE OF TEXAS,
COUNTY OF HARRIS

Before me, the undersigned authority, on this day personally appeared L. T. Barrow, known to me to be the person whose name is subscribed to the foregoing instrument, as Vice-President of Humble Oil & Refining Company, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said Humble Oil & Refining Company.

Given under my hand and seal of office, this the 12th day of July, A.D., 1946.

John P. Cavanaugh
Notary Public in and for
Harris County, Texas

My Commission expires 6-1-47.

CMcM

FHK

MPD

HB

WRK

TT

MMS

ATTEST:

HUMBLE OIL & REFINING COMPANY

BY M. B. FOX

Asst. Secretary

BY L. T. BARROW

Vice President

JHP

JHP, Jr

AMP

RCR

ECH

CH

ACS

ATTEST:

COASTAL OIL FINDING COMPANY

BY

BY

HL

HED

Humble Exh. #29
For Iden.

CASINGHEAD GAS SETTLEMENT
JUNE 1954

Contract Date: January 7, 1941

Buyer: Shell Oil Company

Seller: Humble Oil & Refining Company

County: Yoakum State: Texas

The casinghead gas which Petitioner sells to Shell from a given lease under this contract has a gasoline content (GPM —gallons per 1,000 cubic feet) of 1.016 gallons per 1,000 cubic feet. Based upon volumes and values for the month of June 1954 and calculated in accordance with the formula in this contract, the value of the liquid hydrocarbons manufactured from this casinghead gas is $0.0114163 per Mcf, whereas, the residue value is $0.0196424 per Mcf. This means that for each 1,000 cubic feet of casinghead gas which Petitioner sells to Shell under this contract, Petitioner receives 1.14163 cents for liquid hydrocarbons manufactured therefrom and 1.96424 cents per Mcf for the residue gas Shell sells to an interstate pipe line company.

The computations for a given lease are as follows:

Lease Gasoline Credit ..... $ 278.44

Wet gas produced 34,258 Mcf x 1.016 GPM = 34,806 gallons of 26# R.V.P. gasoline in casinghead gas produced to plant as per Sections 8 and 10.

The National Petroleum News posting for 26/70 gasoline (North Texas market) was 4¢ for June. Under the contract when the price is from 4¢ to 6¢ the lease is paid 20% of the value of the gasoline.

Lease Butane—Propane Credit 112.66

The contract under Section 25 amendment provides that each lease will participate in the butane-propane actually produced in the plant based on each lease's tested theoretical gasoline content as compared to the plant total tested gasoline content and if the price is 2¢ or less the lease will get 15% of the value.

$11,029.40—Total butane-propane money
3,407,631—Total test gallon gasoline=$0.0032367 per test gallon

34,258 Mcf x 1.016 GPM = 34,806 test gallons

34,806 test gallons x $0.0032367 = 112.66

Lease Residue Gas Credit ..... $ 672.91

Buyer sells such residue as is available for sale and for which a market exists after satisfying lease needs and pays the lease 50% of the value received. The residue remaining is determined by the curve contained in the contract. 34,258 Mcf x .8310 — 900 (lease use) = 27,568 Mcf theoretical volume available for sale. The total theoretical volume of residue gas available for sale from the plant was 3,037,925 Mcf; however, only 2,628,439 Mcf was sold or 86.521% of the theoretical. Settlement for residue gas received by Petitioner is calculated as follows:

Residue gas sold — 2,628,439 Mcf @ 5.642¢ = $148,305.90

50% of sales value ..... —$74,152.95 / Theoretical volume available— 3,037,925 = 2.44091¢/Mcf

27,568 x 2.44091¢ = $672.91

Values per Mcf of Wet Gas to Petitioner

Liquids	1.14163¢	36.75%
Residue Gas	1.96424¢	63.25%
Total	3.10587¢	100.00%

Humble Exh. #30
For Iden.

CASINGHEAD GAS SETTLEMENT
SEPTEMBER 1954

Purchaser: El Paso Natural Gas Company

Lease: E. E. Hunter

County: Lea

Field: Cooper-Jal

State: New Mexico

Lease Gasoline Credit ..... $ 82.04

Wet gas produced—27,008 Mcf x .491 GPM = 13,261 test gallons of 26# R.V.P. gasoline in gas produced to plant.

The National Petroleum News posting for 26/70 gasoline (North Texas market) was 4.5¢ for September. When this price and .491 GPM are applied to the chart which is a part of the contract, it is determined that 13.75% of the test gallons of gasoline will be credited to the lease. Thus, 13.75% x 13,261 gallons x 4.5¢ = $82.04.

Lease Butane-Propane Credit 31.57

The contract provides that credit to leases shall be determined on the percentage of the plant total of wet gas furnished by a specific lease, this credit then being multiplied by a percentage determined by the butane-propane GPM and the average sales price of the butane-propane. Thus, since the subject lease furnished 2.259% of the El Paso Jal No. 4 plant wet gas load, the credit would be computed: 2.259% x $13,975.81 (value of all butane-propane) x 10% (Paragraph 4(c) (A) (b) of the contract—GPM .544, average sales price 2.1487¢ per gallon) = $31.57.

Lease Residue Gas Credit 1,066.95

Plant operator determines the total quantity of residue gas sold from its plant. This volume is allocated to leases connected to the plant in direct ratio to the volume of wet gas received into the plant. In this instance, the calculations are as follows:

Volume residue gas sold—858,754 Mcf

Wet gas to plant—this lease— 27,008 Mcf
Wet gas to plant—total ..... —1,195,475 Mcf = 2.259%

2.259% of 858,754 = 19,399
19,399 x 5.5¢ (contract price) = $1,066.95

Values per Mcf of Wet gas to Petitioner

Liquids	0.42¢	9.61%
Residue Gas	3.95¢	90.39%
Total	4.37¢	100.00%

CERTIFICATE OF SERVICE

I certify that five (5) true copies of the foregoing "Appendix to Brief of Petitioner, Humble Oil & Refining Company" have been served upon Willard W. Gatchell, General Counsel for Respondent, the Federal Power Commission, by mail this 7th day of June, 1956.

/S/ CARL ILLIG

Attorney for Petitioner,
Humble Oil & Refining Company

Lease Residue Gas Credit 1,066.95

Plant operator determines the total quantity of residue gas sold ffom its plant. This volume is allocated to leases connected to the plant in direct ratio to the volume of wet gas received into the plant. In this instance, the calculations are as follows:

Volume residue gas sold—858,754 Mcf

Wet gas to plant—this lease— 27,008 Mcf
Wet gas to plant—total ... —1,195,475 Mcf = 2.259%

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Liquids	0.42¢	9.61%
Residue Gas	3.95¢	90.39%
Total	4.37¢	100.00%

CERTIFICATE OF SERVICE

I certify that five (5) true copies of the foregoing "Appendix to Brief of Petitioner, Humble Oil & Refining Company" have been served upon Willard W. Gatchell, General Counsel for Respondent, the Federal Power Commission, by mail this 7th day of June, 1956.

/S/ CARL ILLIG

Attorney for Petitioner,
Humble Oil & Refining Company

Office - Supreme Court, U.S.
FILED
SEP 11 1957
JOHN T. FEY, Clerk

No. 449

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 15,900.

SHELL OIL COMPANY,
Petitioner,

vs.

FEDERAL POWER COMMISSION,
Respondent.

ON PETITION TO REVIEW AND SET ASIDE ORDER OF THE FEDERAL POWER COMMISSION

VOLUME TWO
APPENDIX TO BRIEF OF PETITIONER
(Exhibits)

DAVID T. SEARLS,
VINSON, ELKINS, WEEMS & SEARLS,
Esperson Building,
Houston, Texas,

R. H. WHILDEN,
Shell Building,
Houston, Texas,

PAXTON HOWARD,
Petroleum Building,
Midland, Texas,

WILLIAM F. KENNEY,
OLIVER L. STONE,
50 West 50th Street,
New York 20, N. Y.,

Attorneys for Petitioner.

Exhibit 1.

(Opposite ☞)

Note

Exhibit * 1 *
is on Card 13.

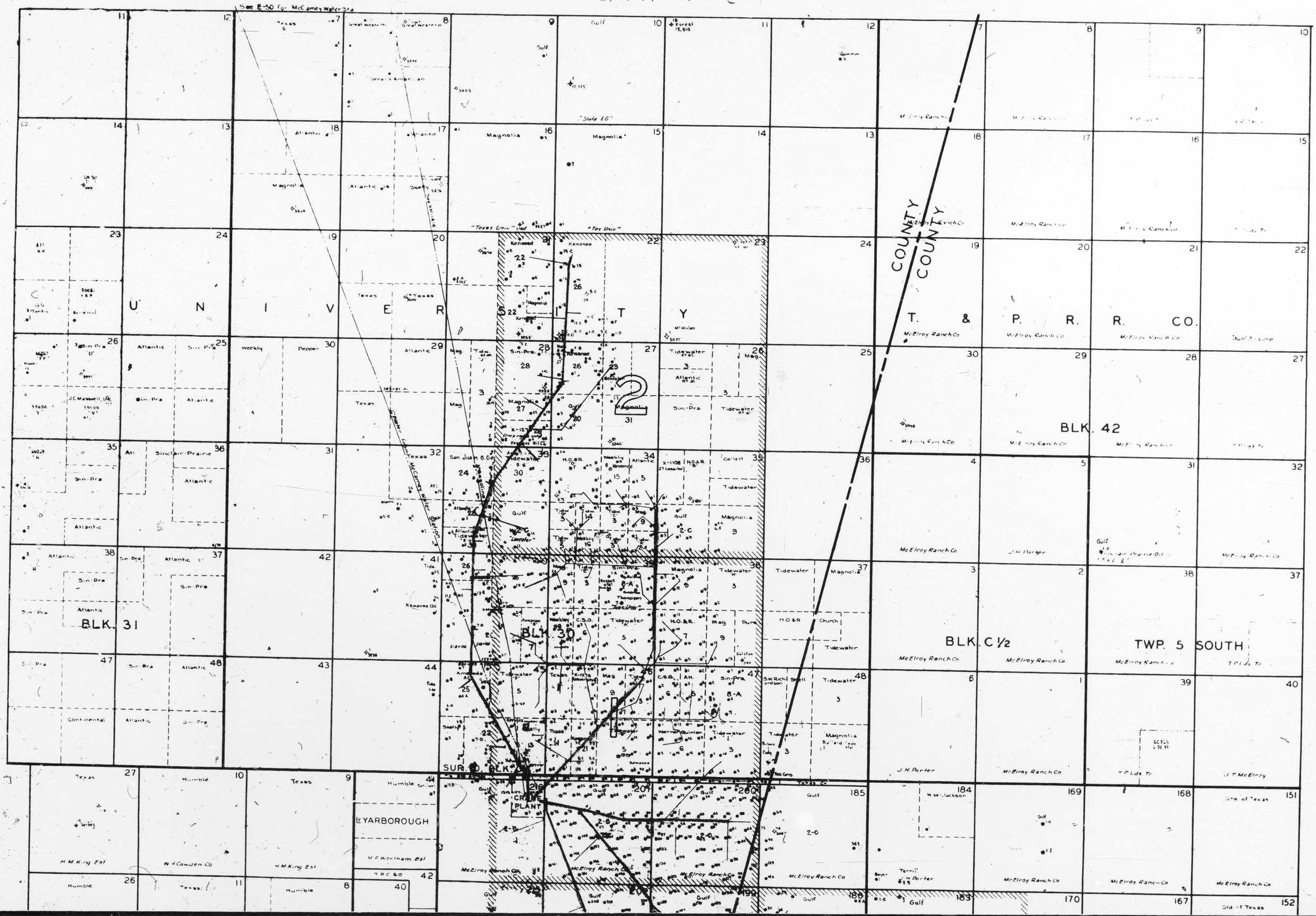
Note

Exhibit 2, page 5
(2 sheets) is on cards 13 & 14

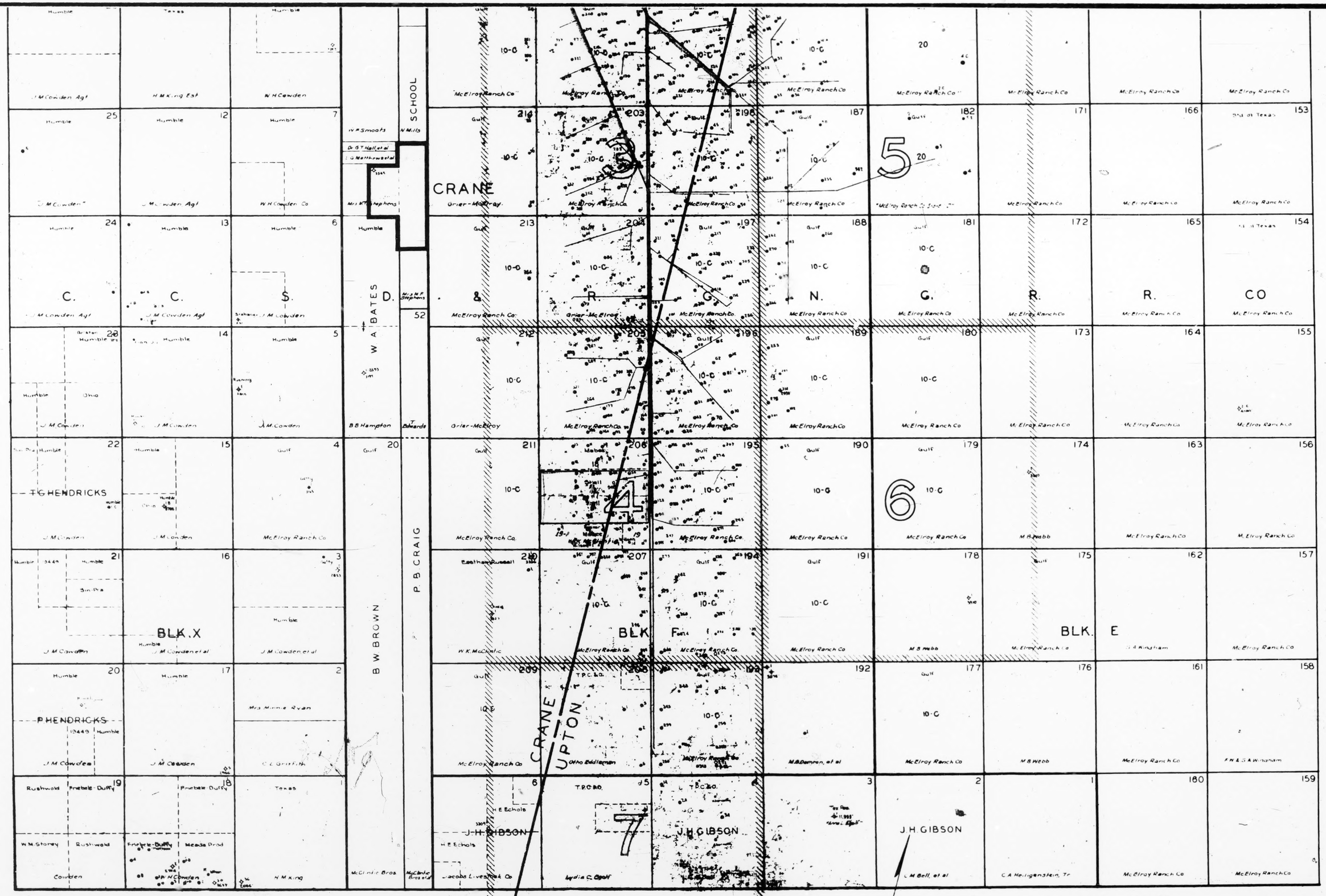
Note

Exhibit * 3 *
is on Card 14

EXHIBIT 1. (P. 3)



See E-50 for McCamey Water Sta
U N I V E R S I T Y
T. & P. R. R. CO.
COUNTY
COUNTY
BLK. 42
BLK. 31
BLK. 30
BLK. C 1/2
TWP. 5 SOUTH
SUR. TO BLK.
CRANE PLANT
YARBOROUGH
McElroy Ranch Co
J. H. Porter
J. T. McElroy
Magnolia
Atlantic
Sin-Pra
Tidewater
Gulf
Texas
Humble
Continental
Kewanee
Kenwood
Weekly
Pepper
Collett
Church
Pure
Warren Quinlan
Sinclair-Prairie
Sinclair Prairie Oil
Std of Texas



WELLS & LEASES UNDER CONTRACT
CRANE DISTRICT
PHILLIPS PETROLEUM CO.
BARTLESVILLE. OKLA.

SCALE: 2" = 1 MILE
G WALKER 9-27-44

REVISED	BY	DATE
[illegible]	HWC	11-1-51
[illegible]	HWC	[illegible]

E-48

[EXHIBIT 2 SHEET 1 OF 11]

EXHIBIT A

Casinghead Gas Contract

[redacted]

This Agreement, Made and entered into this 7th day of May, 1936 by and between International Petroleum Corporation

hereinafter referred to as the "Seller"

and PHILLIPS PETROLEUM [redacted]

hereinafter referred to as the "Buyer".

WITNESSETH: WHEREAS, Seller owns and holds a certain valid and subsisting oil and gas mining lease covering the following described lands situate and being within the County of Orange & Tyler, State of Texas, to-wit:

S½ of the N½ and the N½ of the S½ of Section 106, Block F, [redacted], T.C.S.D.&R.G.N.G. R.R.C. Survey (change attempted by an Affidavit of 11-7-36)

and,

WHEREAS, Seller is operating the above described properties and certain wells on said lands are productive, or may be productive, in addition to oil, of what is termed casinghead gas, (it being understood that the term "casinghead gas" means the gas arising from oil wells whether produced from the same sand or strata from which the oil is produced or by the induction of gas with compressors or other means for flowing the oil), and the Seller desires to sell the casinghead gas which may hereafter be produced from oil wells located on said premises, and,

WHEREAS, Buyer contemplates the construction of, or has in operation, a gasoline plant in the vicinity of said property and desires to buy said casinghead gas.

NOW, THEREFORE, in consideration of the sum of One ($1.00) Dollar paid by the Buyer to the Seller, receipt of which is hereby acknowledged, and other payments and covenants hereinafter specified, the Seller hereby grants, bargains, sells and agrees to deliver to the Buyer and the Buyer agrees to purchase and take from the Seller, subject to the stipulations and conditions hereinafter specified, all the casinghead gas now or hereafter produced from the wells on the lands hereinabove described.

1—PURPOSE—The gas hereby sold is conveyed to the Buyer for the purpose of manufacturing therefrom gasoline or such other product or products as may be manufactured at Buyer's plant.

2—DELIVERY PLACE—The delivery of the casinghead gas shall be made at vapor tight flow tanks and/or gas traps furnished by Seller and/or at the casingheads of the wells. Buyer may, with Seller's consent, install equipment acceptable to Seller on Seller's storage tanks for the purpose of saving and utilizing vapors therefrom, which vapors for the purpose of this contract shall be considered casinghead gas.

3—DELIVERY DATE—The delivery and acceptance of said gas shall begin on or before _____ 19____, and failure to accept and/or agree to pay for said gas by said date shall give the Seller the right to cancel this contract any time thereafter before actual utilization begins by serving ten (10) days' written notice on Buyer.

4—LEAN AND FLUSH GAS—The Buyer agrees to take all the gas testing more than 3/4 gallons of gasoline per thousand cubic feet of gas, provided that during flush casinghead gas production from the property covered hereby the Buyer shall only be obligated to take ratably as to quantity with all other flush production connected to its plant. Seller shall have the right to dispose of any gas not taken or paid for by the Buyer, provided that Buyer shall have the right to take any or all of such gas at any time thereafter conditioned upon Buyer giving Seller at least 30 days' notice of its election to so do.

5—RESIDUE GAS—The Buyer shall return to the nearest boundary line of the Seller's lease, above described, sufficient residue gas for the development and operation of said lease, the amount of such gas not to exceed that remaining from the quantity of casinghead gas delivered to the Buyer from said lease after the extraction of gasoline therefrom, less the proportionate part of said residue gas necessary for gasoline plant operation, both determined by the residue gas curve attached hereto, provided that in the event residue gas to be returned hereunder by the Buyer shall be insufficient in quantity for the purpose of developing and operating said lease, the Seller hereby reserves the right to use casinghead gas from its lease sufficient in quantity to make up the deficiency. Utilization of said residue gas so returned by the Buyer shall be at the Seller's risk. In the event Seller accepts and uses dry gas, furnished by Buyer, in excess of the amounts of residue gas to which Seller is entitled, Seller shall pay Buyer for such dry gas at delivered cost to Buyer.

It is agreed and understood by and between the parties hereto, that if and when the residue gas remaining after the extraction of gasoline from such casinghead gas shall be more than sufficient for the needs of Buyer in the operation of said gasoline plant and more than sufficient for the development and operating purposes upon the premises from which the said casinghead gas is produced, then and [redacted] to sell any or all surplus residue gas so remaining; provided that in the event of sale by the Buyer of any or all of such residue gas, Buyer shall pay to the Seller herein fifty per cent of the net proceeds received from the sale of such gas, such payments to be made at the same time as other payments hereunder. Net proceeds as herein used is defined as the gross proceeds less any cost of boosting and/or transportation necessary to market such gas. It is further agreed and understood that as a basis of settlements hereunder for the sale of residue gas, it shall be determined how much residue gas the Seller was entitled to have returned and the volume that actually was returned during the month for which settlement is to be made, and the difference shall be regarded as the volume of surplus residue gas available for sale from the casinghead gas delivered hereunder. The volume of surplus residue gas sold from the casinghead gas delivered hereunder shall be determined by the proportion which the volume of surplus residue gas available for sale from said delivery bears to the total volume of surplus residue gas available for sale from all casinghead gas delivered to said plant.

6—DILUTED GAS—The Seller hereby specifically reserves the right to introduce air, gas, or any other extraneous substance into the well or wells covered hereby or into the sand or sands from which said well or wells are producing when in the exclusive judgment of the Seller the introduction of such substance is desirable in the operation of such well or wells for the production of oil even though such well or wells may be entirely destroyed as a producer or producers of casinghead gas, provided that should the Seller's operations under this paragraph create a condition which in the exclusive judgment of the Buyer makes the taking of casinghead gas therefrom unprofitable to the Buyer, or should such operations tend to endanger the plant or property of Buyer or the lives of Buyer's employees should such diluted or contaminated gas be taken, then Buyer, at its election, may discontinue taking the casinghead gas from the particular well or wells while being so operated.

7—RIGHT OF WAY—In so far as Seller's lease permits, Buyer is granted the right to lay and maintain lines and to install any necessary equipment on said lease and shall have the right to free entry for any purpose incidental to gasoline plant operations so long as such purpose does not interfere with lease operations or the rights of owners in fee. All line and other equipment placed by Buyer on said lands shall remain the property of the Buyer and, subject to the terms of this contract, may be removed by Buyer at any time.

8—SETTLEMENT TESTS—The gasoline contents shall be determined by a field compression test made in accordance with the official code of the Natural Gasoline Association of America for testing natural gas for gasoline contents. The specific gravity shall be determined in accordance with the specifications and test procedure of said association for the determination of specific gravity of natural gases by the balance method. The tests for gasoline contents, air contents and specific gravity of the gas shall be made by the Buyer quarterly except when, in the opinion of either party, a change in the method of operations of the lease will affect materially the gasoline contents and specific gravity of the gas, in which event the tests shall be made at the demand of either party upon five (5) days' notice to the other party. The Buyer shall notify the Seller in writing ten (10) days previous to the quarterly tests in order that it may have a representative present to witness said tests or charcoal test, at Seller's option

EXHIBIT F.

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and/or make same tests with its own appliances. The casinghead gas shall be computed on the basis of four (4) ounces above an assumed atmospheric pressure of

14.4

pounds per square inch absolute and at a base temperature of sixty (60) degrees Fahrenheit.

9—METERS—The casinghead gas delivered hereunder shall be measured by a suitable orifice meter, or meters, of standard make to be furnished, installed and kept in repair by Buyer on the lease herein covered. The amount of gas so measured shall be computed on the basis of four (4) ounces above an assumed atmospheric pressure of 14.4 pounds per square inch absolute at a base temperature of sixty (60) degrees Fahrenheit and at an assumed flowing temperature of 60 degrees Fahrenheit. The Buyer shall test, and if necessary adjust and repair, said meter, or meters, at such times that tests for gasoline content are made. Said meter, or meters, shall be open to employees at all times by Seller in the presence of Buyer. In case any question arises as to the accuracy of the meter measurement said meter, or meters, shall be tested upon the demand of either party. The expense of such tests shall be borne by the party demanding same if the meter is found to be correct and by the Buyer if found incorrect. A registration within 2% of accurate shall be considered accurate. Settlement for any period of inoperation or inaccurate measurement shall be in accordance with the average readings taken during the last preceding ten days when the meter was registering accurately and the first ten days after the meter was restored to accuracy. If so required, Buyer shall send the charts to Seller for examining after which they are to be returned to Buyer.

10—PRICE—The Buyer shall pay to Seller for the casinghead gas delivered hereunder a price per thousand cubic feet to be computed on the following basis:

1. When gasoline content is less than .75 gallons per thousand cubic feet
   (a) When average price is 2c per gallon, or less, 10% of the value of the gasoline
   (b) When average price is more than 2c, but less than 4c per gallon, 15% of the value of the gasoline
   (c) When average price is 4c, but less than 6c per gallon, 15% of the value of the gasoline
   (d) When the average price is 6c per gallon, or more, 25% of the value of the gasoline.
2. When gasoline content is .75 gallons per thousand cubic feet, but less than 1.75 gallons per thousand cubic feet
   (a) When average price is 2c per gallon, or less, 10% of the value of the gasoline
   (b) When average price is more than 2c, but less than 4c per gallon, 15% of the value of the gasoline
   (c) When average price is 4c, but less than 6c per gallon, 20% of the value of the gasoline
   (d) When the average price is 6c per gallon, or more, 25% of the value of the gasoline
3. When gasoline content is 1.75 gallons per thousand cubic feet, or above
   (a) When average price is 2c per gallon, or less, 15% of the value of the gasoline
   (b) When average price is more than 2c, but less than 4c per gallon, 20% of the value of the gasoline
   (c) When average price is 4c, but less than 6c per gallon, 25% of the value of the gasoline
   (d) When the average price is 6c per gallon, or more, 30% of the value of the gasoline.

The value of the gasoline contained in a thousand cubic feet of gas shall be determined by multiplying the gasoline content determined as hereinabove provided by **the average sales price for 26-70 natural gasoline, or its equivalent, as quoted in the National Petroleum News for the settlement period.**

11—PAYMENT—Payment shall be made by the Buyer not later than the 20th day of each month for all casinghead gas purchased hereunder during the preceding month, and at the time payment is made a statement showing full details of the accounts shall be transmitted to the Seller accompanying the Buyer's check in payment therefor. Examination by the Seller of the books of account kept by the Buyer respecting said gas accounts shall be permitted by the Buyer at any and all reasonable hours.

12—TITLE—The Seller warrants its title to said gas and that it has good right to sell said gas to Buyer, but the Buyer shall not be required to make payments until the Seller shall have submitted abstracts of title covering said leasehold showing good and merchantable title in it and that it has good right to sell said casinghead gas, all to the satisfaction of the attorneys of the Buyer; provided however if the title of Seller is questioned, or involved in any action, the Buyer shall have the right to withhold payment during the pendency of such action or until said title is freed from such question, or until Seller furnishes bond conditioned to save Buyer harmless with surety acceptable to the Buyer.

13—ROYALTY—The Seller agrees to account and pay to the lessors severally owning the lease above described, in strict accordance with the provisions thereof, the royalty on the casinghead gas sold and delivered hereunder to Buyer.

14—VACUUM—Upon request of Seller the Buyer shall apply and maintain on Seller's wells a vacuum substantially equal to that maintained on other wells by gasoline plants. Up to such maximum Seller shall have control of said vacuum at all times.

15—DRIP—The Buyer shall keep reasonably clear of obstruction all its pipe lines through which said gas is being delivered and shall drain all liquid collected in such lines.

16—CASUALTY—Any failure of either party hereto to perform any of the obligations hereunder shall be excused if such failure is due to fires, strikes, floods, lack of water, winds, lightning, accidents or any circumstances beyond the control of the party failing to perform.

17—UNPROFITABLE GAS—In the event the casinghead gas from any well or wells on said lease becomes insufficient in volume or gasoline content, or has any cause becomes unprofitable for the extraction of gasoline therefrom, the Buyer shall have the right to cease taking the gas so long as such condition exists. It is further provided that if at any time the volume and/or gasoline content of the gas available to Buyer, or if any cause beyond its control, shall render the construction and/or operation of said plant unprofitable, Buyer may, by thirty days' written notice and payment, or tender, to Seller of Ten ($10.00) Dollars, cancel this contract.

18—PRIORITY RIGHTS OF SELLER—As said premises are being operated primarily for the production of oil, the taking of casinghead gas by the Buyer shall be subservient to said oil operations. The Seller may, at any time, without liability to Buyer clean out, deepen or abandon any well or wells on the above described properties, or may use any efficient, modern or improved method for the production of oil. Before any well or wells are taken out of service for any reason whatsoever Seller agrees to first shut off the same from communication with the gathering mains.

19—INDEMNITY—The Buyer shall indemnify and hold the Seller harmless against any claims for damages growing out of the operations conducted hereunder by the Buyer. Likewise the Seller shall indemnify and hold the Buyer harmless against any claims for damages growing out of Seller's operations on the lease herein described.

20—SCOPE—In the event the property above described covers more than one lease, this contract shall be construed as a separate contract on each lease.

21—REGULATORY BODIES—This contract shall be subject to all the rules and regulations of any duly constituted federal or state regulatory body having jurisdiction herein.

22—ARBITRATION—In the event of any dispute or controversy between the parties hereto involving the operations under this contract same shall be settled by arbitration. Each of the parties shall appoint an arbitrator and the two appointed shall select a third. The award of any two arbitrators shall be conclusive upon the parties and shall be made within thirty days after the appointment of the last arbitrator.

23—TERM—Either party shall have the right to terminate this contract at the expiration of **five** years from the date thereof or on any anniversary of said date thereafter by giving the other party thirty (30) days' notice, in writing, of its intention so to do, after which each party shall be released from all further liability hereunder, provided that in the event the oil and gas lease covering said premises should terminate before the expiration of the term of this contract then this contract shall be cancelled contemporaneously with such termination.

24—ASSIGNMENT—This contract shall extend to and be binding upon the parties hereto, their heirs, administrators, successors and assigns, but no transfer of or succession to the interest of the Seller hereunder, wholly or partially, shall affect or bind the Buyer until it shall have been furnished at the office of the Buyer in the city of **Bartlesville, Oklahoma** with the original instrument or with proper proof that the claimant is legally entitled to such interest.

2/2

INTERNATIONAL PETROLEUM CORP.

President.

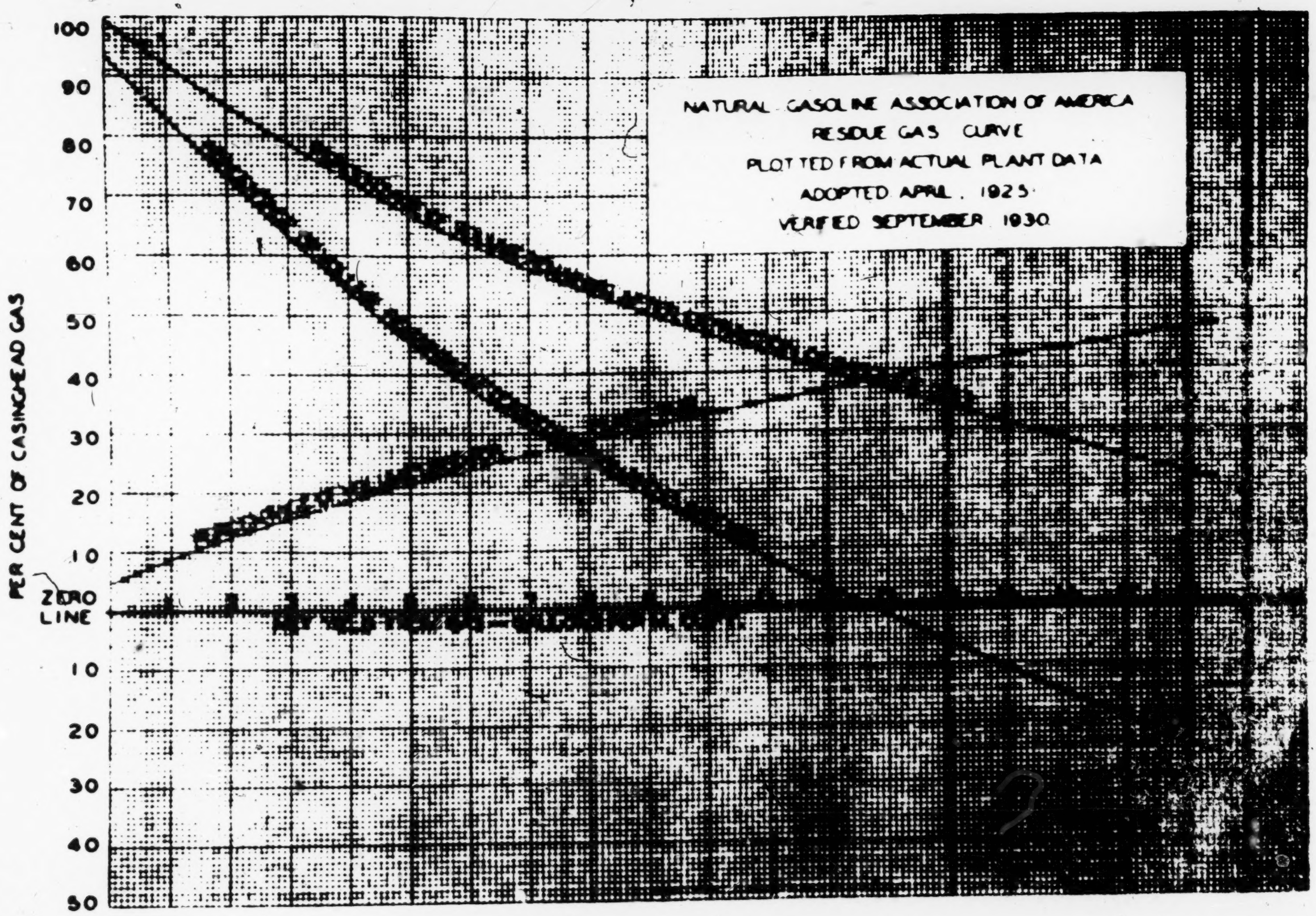
ATTEST:

Assistant Secretary

PHILLIPS PETROLEUM COMPANY

By

Vice President



N G A A Standard Table adopted February 9, 1932, showing the per cent of casinghead gas returnable as residue after extraction and plant use as shown by Natural Gasoline Association of America residue gas curve

G P M	GRET	G P M	GRET	G P M	GRET	G P M	GRET	G P M	GRET	G P M	GRET	G P M	GRET	G P M	GRET	G P M	GRET
.00	0	2.00	72.90	4.00	54.30	6.00	38.30	8.00	25.10	10.00	13.70	12.00	3.50	14.00	8.20	16.00	15.20
.05	93.10	2.05	72.45	4.05	53.85	6.05	37.90	8.05	24.80	10.05	13.55	12.05	3.25	14.05	8.40	16.05	15.55
.10	92.80	2.10	72.00	4.10	53.40	6.10	37.50	8.10	24.50	10.10	13.40	12.10	3.00	14.10	8.60	16.10	15.90
.15	92.10	2.15	71.50	4.15	52.95	6.15	37.20	8.15	24.25	10.15	13.25	12.15	2.75	14.15	8.80	16.15	16.25
.20	91.40	2.20	71.00	4.20	52.50	6.20	36.90	8.20	24.00	10.20	13.10	12.20	2.50	14.20	9.00	16.20	16.60
.25	90.70	2.25	70.50	4.25	52.05	6.25	36.60	8.25	23.75	10.25	12.95	12.25	2.25	14.25	9.20	16.25	16.95
.30	90.00	2.30	70.00	4.30	51.60	6.30	36.30	8.30	23.50	10.30	12.80	12.30	2.00	14.30	9.40	16.30	17.30
.35	89.30	2.35	69.50	4.35	51.15	6.35	36.00	8.35	23.25	10.35	12.65	12.35	1.75	14.35	9.60	16.35	17.65
.40	88.60	2.40	69.00	4.40	50.70	6.40	35.70	8.40	23.00	10.40	12.50	12.40	1.50	14.40	9.80	16.40	18.00
.45	87.90	2.45	68.50	4.45	50.25	6.45	35.40	8.45	22.75	10.45	12.35	12.45	1.25	14.45	10.00	16.45	18.35
.50	87.20	2.50	68.00	4.50	49.80	6.50	35.10	8.50	22.50	10.50	12.20	12.50	1.00	14.50	10.20	16.50	18.70
.55	86.50	2.55	67.50	4.55	49.35	6.55	34.80	8.55	22.25	10.55	12.05	12.55	.75	14.55	10.40	16.55	19.05
.60	85.80	2.60	67.00	4.60	48.90	6.60	34.50	8.60	22.00	10.60	11.90	12.60	.50	14.60	10.60	16.60	19.40
.65	85.10	2.65	66.50	4.65	48.45	6.65	34.20	8.65	21.75	10.65	11.75	12.65	.25	14.65	10.80	16.65	19.75
.70	84.40	2.70	66.00	4.70	48.00	6.70	33.90	8.70	21.50	10.70	11.60	12.70	.00	14.70	11.00	16.70	20.10
.75	83.70	2.75	65.50	4.75	47.55	6.75	33.60	8.75	21.25	10.75	11.45	12.75	.00	14.75	11.20	16.75	20.45
.80	83.00	2.80	65.00	4.80	47.10	6.80	33.30	8.80	21.00	10.80	11.30	12.80	.00	14.80	11.40	16.80	20.80
.85	82.30	2.85	64.50	4.85	46.65	6.85	33.00	8.85	20.75	10.85	11.15	12.85	.00	14.85	11.60	16.85	21.15
.90	81.60	2.90	64.00	4.90	46.20	6.90	32.70	8.90	20.50	10.90	11.00	12.90	.00	14.90	11.80	16.90	21.50
.95	80.90	2.95	63.50	4.95	45.75	6.95	32.40	8.95	20.25	10.95	10.85	12.95	.00	14.95	12.00	16.95	21.85
1.00	80.20	3.00	63.00	5.00	45.30	7.00	32.10	9.00	20.00	11.00	10.70	13.00	.00	15.00	12.20	17.00	22.20
1.05	79.50	3.05	62.50	5.05	44.85	7.05	31.80	9.05	19.75	11.05	10.55	13.05	.00	15.05	12.40	17.05	22.55
1.10	78.80	3.10	62.00	5.10	44.40	7.10	31.50	9.10	19.50	11.10	10.40	13.10	.00	15.10	12.60	17.10	22.90
1.15	78.10	3.15	61.50	5.15	43.95	7.15	31.20	9.15	19.25	11.15	10.25	13.15	.00	15.15	12.80	17.15	23.25
1.20	77.40	3.20	61.00	5.20	43.50	7.20	30.90	9.20	19.00	11.20	10.10	13.20	.00	15.20	13.00	17.20	23.60
1.25	76.70	3.25	60.50	5.25	43.05	7.25	30.60	9.25	18.75	11.25	9.95	13.25	.00	15.25	13.20	17.25	23.95
1.30	76.00	3.30	60.00	5.30	42.60	7.30	30.30	9.30	18.50	11.30	9.80	13.30	.00	15.30	13.40	17.30	24.30
1.35	75.30	3.35	59.50	5.35	42.15	7.35	30.00	9.35	18.25	11.35	9.65	13.35	.00	15.35	13.60	17.35	24.65
1.40	74.60	3.40	59.00	5.40	41.70	7.40	29.70	9.40	18.00	11.40	9.50	13.40	.00	15.40	13.80	17.40	25.00
1.45	73.90	3.45	58.50	5.45	41.25	7.45	29.40	9.45	17.75	11.45	9.35	13.45	.00	15.45	14.00	17.45	25.35
1.50	73.20	3.50	58.00	5.50	40.80	7.50	29.10	9.50	17.50	11.50	9.20	13.50	.00	15.50	14.20	17.50	25.70
1.55	72.50	3.55	57.50	5.55	40.35	7.55	28.80	9.55	17.25	11.55	9.05	13.55	.00	15.55	14.40	17.55	26.05
1.60	71.80	3.60	57.00	5.60	39.90	7.60	28.50	9.60	17.00	11.60	8.90	13.60	.00	15.60	14.60	17.60	26.40
1.65	71.10	3.65	56.50	5.65	39.45	7.65	28.20	9.65	16.75	11.65	8.75	13.65	.00	15.65	14.80	17.65	26.75
1.70	70.40	3.70	56.00	5.70	39.00	7.70	27.90	9.70	16.50	11.70	8.60	13.70	.00	15.70	15.00	17.70	27.10
1.75	69.70	3.75	55.50	5.75	38.55	7.75	27.60	9.75	16.25	11.75	8.45	13.75	.00	15.75	15.20	17.75	27.45
1.80	69.00	3.80	55.00	5.80	38.10	7.80	27.30	9.80	16.00	11.80	8.30	13.80	.00	15.80	15.40	17.80	27.80
1.85	68.30	3.85	54.50	5.85	37.65	7.85	27.00	9.85	15.75	11.85	8.15	13.85	.00	15.85	15.60	17.85	28.15
1.90	67.60	3.90	54.00	5.90	37.20	7.90	26.70	9.90	15.50	11.90	8.00	13.90	.00	15.90	15.80	17.90	28.50
1.95	66.90	3.95	53.50	5.95	36.75	7.95	26.40	9.95	15.25	11.95	7.85	13.95	.00	15.95	16.00	17.95	28.85
2.00	66.20	4.00	53.00	6.00	36.30	8.00	26.10	10.00	15.00	12.00	7.70	14.00	.00	16.00	16.20	18.00	29.20

[Ex. 2 SHEET 4 OF 11]

SPECIAL FORMS FOR ACKNOWLEDGMENT
Applicable in Oklahoma, Kansas, Arkansas, Texas and New Mexico.
CORPORATE FORM

STATE OF TEXAS
COUNTY OF TARRANT } ss.

Before me, the undersigned authority, on this day personally appeared F. M. Cornelius, President of International Petroleum Corporation known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the free act and deed of the said International Petroleum Corporation, a corporation, and that he having been duly authorized by the board of directors of said corporation, executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office at Ft. Worth, Texas this the 7th day of May, A D 1936

My Commission Expires June 1, 1937

Notary Public in and for Tarrant County, Texas.

CORPORATE FORM

STATE OF OKLAHOMA
COUNTY OF WASHINGTON } ss.

Before me, the undersigned authority, on this day personally appeared F. E. RICE, Vice President of PHILLIPS PETROLEUM COMPANY, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the free act and deed of the said PHILLIPS PETROLEUM COMPANY, a corporation, and that he having been duly authorized by the board of directors of said corporation, executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the purposes and consideration therein expressed, and in the capacity therein stated

Given under my hand and seal of office at BARTLESVILLE this the 16th day of May, A D 1936

My Commission Expires Oct. 20, 1938

Notary Public in and for STATE OF OKLAHOMA COUNTY

No. Standard Form Revised

CASINGHEAD GAS CONTRACT

FROM

TO

Dated ..... 19....
Lot ..... Block ..... Addition .....
Section ..... Township ..... Range .....
..... County, ...
No. of Acres ..... Tens .....

STATE OF .....
County of ..... } ss

The instrument was filed for record on the ..... day of ..... 19....
at ..... o'clock ..... M. and duly recorded in Book ..... Page ..... of the records of this office.

..... County Clerk—Register of Deeds
By ..... Deputy

When Recorded Return to

.....
.....

INDIVIDUAL FORM

STATE OF .....
COUNTY OF ..... } ss

Before me, the undersigned, a Notary Public, in and for said County and State, on this ..... day of ....., 19....., personally appeared .....
..... and .....
to me known to be the identical person.... who executed the within and foregoing instrument and acknowledged to me that.... executed the same as.... free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

My Commission Expires ..... Notary Public

2-46

[EX. 2 SHEET 5]

...ENT TO CASINGHEAD GAS CONTRACT

KNOW ALL MEN BY THESE PRESENTS: #17 McKinney

That the undersigned person and/or corporation, designated as Sellers, are the owners of a valid and subsisting oil and gas lease and a leasehold estate in and upon the following described lands in [redacted] County, Texas, to wit:

S/2 E/2 and E/2 S/2 of Section 206,
Block 7, GH&H & RR Ry. Survey,

and said undersigned Sellers, or their predecessors in interest, have heretofore entered into a certain casinghead gas contract (and supplements thereto, if any) with the undersigned, Phillips Petroleum Company, hereinafter referred to as Buyer, or its predecessor in interest, covering said lands and providing for payment for casinghead gas purchased under said casinghead gas contract upon the basis of a price schedule set forth in said casinghead gas contract, or supplement thereto. Said casinghead gas contract (and supplements thereto, if any) are now owned by the undersigned, Phillips Petroleum Company.

For and in consideration of the mutual benefits to the parties hereto, it is hereby agreed that, effective August 1, 1939, said casinghead gas contract (and supplements thereto, if any) shall be modified and amended to include the following provision, to wit:

"In the event Buyer shall manufacture or extract from the gas purchased under said casinghead gas contract (and supplements thereto, if any) any product or products other than, and in addition to, residue gas and 26-70 gasoline (as defined by Natural Gasoline Association of America January 1, 1938) and/or its normal constituents or components in their normal proportions in such gasoline when extracted from said gas, and shall market

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[EX. 2 SHEET 6]

such additional product or products or use it or them for any purpose other than for plant fuel or in the residue gas, Buyer shall pay to Seller a further five per cent (5%) additional to the various percentages set out in the price schedule now applicable under said casinghead gas contract, or supplement thereto. It is understood, however, that Buyer shall have the right, free of such additional consideration, to manufacture or extract from the gas 66-70° gasoline and/or any and all of its normal constituents or components in their normal proportions in such gasoline when extracted from said gas and to refine or reprocess the same in any manner or into any other products."

The terms, covenants and provisions hereof shall extend to and be binding upon the parties hereto, their assigns and successors in interest.

Executed this 23rd day of March, 1944.

ATTEST:

Assistant Secretary

SHELL OIL COMPANY, INCORPORATED

Attorney-in-Fact

SELLER.

ATTEST:

Assistant Secretary

PHILLIPS PETROLEUM COMPANY

BY

Vice President

75

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[EX 2 SHEET 7]

THE STATE OF Texas,)

COUNTY OF Harris.)

Before me, the undersigned authority, on this day personally appeared L. E. Gibbs, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of the Anchor Drilling Co., a corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this 23 day of April, A. D. 19 40.

Geo. Tuiou

Notary Public in and for the County of Harris, State of Texas

THE STATE OF OKLAHOMA.)

COUNTY OF WASHINGTON.)

Before me, the undersigned authority, on this day personally appeared F. E. Rice, Vice President, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of PHILLIPS PETROLEUM COMPANY, a corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this 14 day of May, A. D. 19 40.

Notary Public in and for the [redacted] of [redacted], State of Oklahoma

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SUPPLEMENT TO CASINGHEAD GAS CONTRACT #17 Crane

[EX. 2 SHEET 8]

THIS SUPPLEMENTAL AGREEMENT, Made and entered into this 1 day of October, 1952, by and between the undersigned persons designated and referred to herein as "Seller," whether one or more, and the undersigned PHILLIPS PETROLEUM COMPANY, referred to herein as "Phillips,"

WITNESSETH:

1. This agreement supplements that certain Casinghead Gas Contract dated May 7, 1936, between the undersigned Seller or his predecessor, as Seller, and Phillips or its predecessor, as Buyer, covering the following described lands in Crane & Upton Counties, Texas, to-wit:

S/2 N/2 and N/2 S/2 Section 206, Block F, CCSD & RGNG Ry. Survey.

2. It is understood that the casinghead gas purchased under said Casinghead Gas Contract is processed by Phillips in its Crane Natural Gasoline Plant and that, in connection with and adjacent to said Natural Gasoline Plant, Phillips operates a treater in which it sweetens a part of the residue gas from said Natural Gasoline Plant by removing therefrom "acid gas" consisting of hydrogen sulphide and impurities, and that Phillips is now selling such acid gas to its subsidiary, Phillips Chemical Company, which extracts the hydrogen sulphide from the acid gas and manufactures sulphur therefrom in its sulphur plant located near Phillips' said Crane Natural Gasoline Plant.

3. As additional consideration for the casinghead gas purchased by Phillips under the terms of said Casinghead Gas Contract, and all component parts thereof, and in lieu of any other payments in respect of acid gas removed from such casinghead gas in said treater, Phillips agrees to pay to Seller each month the value (determined as provided in Section 4 hereof) of the total volume (determined as provided in Section 5 hereof) of hydrogen sulphide content of the acid gas removed by Phillips from such casinghead gas and sold by Phillips to Phillips Chemical Company during such month.

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4. The value per Mcf of such hydrogen sulphide content shall be as indicated in the following PRICE TABLE, based upon the published price of sulphur for the applicable accounting period: [EX. 2 SHEET 9]

PRICE TABLE

Quoted Price of Sulphur $/Long Ton	Value of Hydrogen Sulphide in $/Mcf
12	0.0155
14	0.0311
16	0.0466
18	0.0621
20	0.0776
22	0.0932
23	0.1009
24	0.1086
26	0.1242
28	0.1397
30	0.1553

The term "Quoted Price of Sulphur per Long Ton" as used in the foregoing PRICE TABLE shall mean the arithmetic average during the applicable accounting period of all quotations (high and low) for crude sulphur per long ton f.o.b. cars Gulf Coast mines published in the weekly issue of the Oil, Paint and Drug Reporter during such period. In the event said publication shall cease to issue or shall cease to publish such quotations, such other publication or publications shall be used as then shall be recognized as authoritative by the United States Chemical Industry.

5. The total volume of hydrogen sulphide content of the acid gas removed by Phillips in said treater from the casinghead gas purchased under said Casinghead Gas Contract and sold by Phillips to Phillips Chemical Company during each month, shall be determined as follows:

(a) At each meter station through which gas processed in said Natural Gasoline Plant is measured, tests to determine the percentage of hydrogen sulphide content of the gas at such meter station shall be made by the Tutweiler Method* annually or as much oftener as may be required by changing conditions (as, for instance, by the completion or abandonment of a well from which gas is measured at such meter station). The first such tests shall apply from beginning of the sulphur manufacturing operations hereinabove described until the effective date of the next following tests.

---

*American Gas Chemists Handbook, Chemical Publishing Company, Third Edition 1929, page 462.

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[EX. 2 SHEET 10]

After the first such tests, each test shall be applicable as of the first of the calendar month following the taking of such test and shall continue to be applicable until the effective date of the next following test. Phillips shall give Seller at least ten days' written notice of the taking of each such test of gas delivered under said Casinghead Gas Contract and Seller may witness the test or make joint tests with its own appliances. Upon written request from Seller to Phillips, Seller shall also be entitled to have a representative present to witness the taking of all other tests herein provided for.

(b) The volume of hydrogen sulphide contained in all acid gas removed at said treater during each monthly accounting period and delivered by Phillips to Phillips Chemical Company shall be determined by tests of such acid gas made at weekly intervals by methods accepted in the industry for the testing of such gas, each such test to apply until the following test is made.

(c) In respect of casinghead gas delivered under said Casinghead Gas Contract, the term "gas available for sale" shall mean that volume of gas which Seller is entitled to have returned for lease operations, under the terms of Section 5, RESIDUE GAS, of said Casinghead Gas Contract, less the volume of gas actually returned for that purpose. In respect of all other gas delivered by other sellers or producers from other points and processed in Phillips' Crane Natural Gasoline Plant, the term "gas available for sale" shall have a like meaning and be determined in a like manner.

(d) The volume of hydrogen sulphide contained in the gas available for sale from casinghead gas delivered under said Casinghead Gas Contract during each monthly accounting period shall be deemed to be the volume of such gas available for sale during such period multiplied by the percentage of hydrogen sulphide content of the gas delivered under said contract during said period. The volume of hydrogen sulphide contained in the gas available for sale from all gas delivered through all meter stations and processed in said Natural Gasoline Plant during such accounting period shall be determined in like manner using the tests for hydrogen sulphide content made at the various meter stations as provided above.

[EX. 2 SHEET 11]

(e) The total volume of hydrogen sulphide content of acid gas removed by Phillips in said treater from casinghead gas purchased under said Casinghead Gas Contract and sold by Phillips to Phillips Chemical Company during each month shall be deemed to be that proportionate part of the total volume of hydrogen sulphide content of all acid gas removed in said treater and delivered by Phillips to Phillips Chemical Company during such month which the volume of hydrogen sulphide content of the gas available for sale from all casinghead gas delivered under said Casinghead Gas Contract during such month bears to the total volume of hydrogen sulphide content of all gas available for sale from all gas delivered through all meter stations and processed in said Natural Gasoline Plant, determined as above provided.

6. All measurements and tests of gas shall be made at the pressure and temperature and under all applicable conditions specified in said Casinghead Gas Contract.

As herein supplemented, said Casinghead Gas Contract shall be and remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names.

ATTEST:

Assistant Secretary

SHELL OIL COMPANY

By

Vice-President

Seller

ATTEST:

Assistant Secretary

PHILLIPS PETROLEUM COMPANY

By

Vice-President

Buyer

3/11

[EXHIBIT 3] P.7

THE INDEPENDENT LABORATORY

HYDROCARBON ANALYSIS

PHONE 7-7952
P. O. BOX 909
ODESSA, TEXAS

LABORATORY REPORT

Charge Shell Oil Co.
Test No. 54--11-301
Date of Run 11-21-54
Date Received 11-19-54

A Sample of Composite Gas Down Stream of traps
Secured from Meter run of McClintic "A" and "B" leases
At Crane, Texas Samples taken by Date 11-19-54
Atmospheric Conditions: Temperature 66°F Pressure 704 mm Other
Sampling Conditions: Temperature 66°F Pressure line 7# psig Bomb Press. 7# psig

Where Measured	Base Press.	Temp. of Gas to	°F
Gas Volume	MFC/	Temp. of Gas from	°F
Liquid Volume	Gallons/	Temp. of Oil to	°F
Oil Rate	Gallons/	Temp. of Oil from	°F
Gas-Oil Ratio	Cu. Ft./	Press. of Abs.	Lbs.

LOW-TEMPERATURE ANALYSIS

	Gas Vol. or Mol %	Liquid Vol. %	GPM
Hydrogen Sulfide	8.80		
Carbon Dioxide	3.65		
Air			
Nitrogen	11.78		
Oxygen			
Methane	39.25		6.65
Ethane	18.88		4.79
Propane	8.97		2.46
Iso-Butane	1.33		.43
N-Butane	3.08		.97
Iso-Pentane	1.10		.40
N-Pentane	1.09		.39
Iso-Hexane			
N-Hexane			
Pentanes (2)			
Hexanes (2)	2.07		.88
Heptane (2)			
TOTAL	100.00		16.97

(1) and lighter
(2) and heavier

ANALYSIS INFORMATION

Volume of Sample _____ cc. @ °F
Sp. Gr. Residue _____ Vol. of Residue cc.
Molecular Wgt. of Residue _____

VAPOR PRESSURE

_____ lbs. @ 100°F
Calculated _____ lbs. @ 100°F

GASOLINE CONTENT

150% Pentanes plus	2.505	G.P.M.
100 % Propane plus	2.460	G.P.M.
Net Test Car Date- Excess C_4	.565	G.P.M.
Gross Test Car Date-		G.P.M.
Net Charcoal Date- Total	5.530	G.P.M.

OTHER DATA

P—(Propane) %
B—(Butane) %
C—(Casing-head) %
BTU Content (Actual) _____ (Calc.) 1295
Sp. Gravity (Actual) _____ (Calc.) 1.0310
A.P.I. Gr. (Actual) _____ (Calc.)

Run by: John N. Wolf Checked by: John N. Wolf Approved: John N. Wolf

ADDITIONAL DATA

	Gallons	% Extraction
C1		
C2		
C3		
C4i		
C4h		
C5i		
C5h		
C6i		
C6h		
C5+		
C6+		
C7+		

REMARKS

Hydrogen Sulfide and Carbon Dioxide have been corrected for temperature and Barometric pressure.

COPIES

7- J.L.Brown
Shell Oil Co.
Box 1509
Midland

1-file

3-1

[EXHIBIT 4] [P. 9]

4

PHILLIPS PETROLEUM COMPANY

Bartlesville, Oklahoma

GAS STATEMENT

FORM 2185 CRANE ☐

OPERATOR	LEASE	STATE	TYPE CONTRACT	METER STATION
SHELL OIL CO	W K MCCLINTIC A	TEXAS	NP 69	17879-0

FIELD	COUNTY	SYSTEM	PRESSURE BASE	TYPE GAS	PERIOD	LEASE
MCELROY	CRANE	CRANE	14.65	00	SEP 1954	017873

TOTAL PLANT DATA

1. Total of Col. 16 For all meter Stations. M. c. f.	2. Avg. A. P. I. Gravity of unfractionated Gasoline.	3. Total Test Gallons All Meter Stations	4. Total Gas Sold -- M. c. f.	5. Weighted Average Price Per M. c. f.	6. Portion of Proceeds From Gas Sold Dup All Meter Stations.
650.865			597.628	.	16,129.24

PAYMENT SUMMARY

Off. Code	7. Total M. c. f.	8. Total Value	9. O. P. Tax	10. Excise Tax	11. Total Tax	12. Total Value Less Tax
83	13.626	730.19	65.72		65.72	664.47
	13.626	730.19	65.72		65.72	664.47 *

STATION RESIDUE GAS COMPUTATIONS

Off. Code	13. Col. 14 Times Col. 19 M. c. f.	14. % of Gas Returnable.	15. M. c. f. Returned To Lease.	16. Difference Between Columns 13 & 15.	17. Price Applicable To Column 16.	18. Residue Portion of Total Value
41	9.484	69.6				
42	9.484			9.484	.0247720	234.94
						234.94 *

STATION LIQUID COMPUTATIONS

Off. Code	19. Total M. c. f.	20. Test Gasoline Content per M. c. f.	21. Meter Station Test Gallons.	22. % Per Contract.	23. Column 21 Times Column 22.	24. Gasoline or Oil Price	25. Unit Price	26. Liquid Portion of Total Value.
51	13.626	2.560	34.883	30.00	10.465	.765		470.93
99			TEM.80)			.FACT	.0077	3.63
	13.626							474.56 *

STATION HYDROGEN SULPHIDE COMPUTATIONS

Off. Code	27. M. c. f. For H_2S Portion.	28. % of H_2S For M. c. f.	29. H_2S Content of Column 27 M. c. f.	30. Plant Total of Column 27 M. c. f.	31. Acid Gas Value All Leases.	32. Price Applicable To Column 29.	33. H_2S Portion of Total Value.
62	9.484	7.750	735	54.713	1,544.69	.0282328	20.69
2							20.69 *

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Exhibit 4.

(Opposite ☞)

Note

Exhibit 4 Page 9 is on card 14

Exhibit 5.

(Opposite ☞)

Note

Exhibit 5 Page 11 is on card 17

Exhibit 6.

(Opposite ☞).

Note

Exhibit 6 Page 13 is on card 17

Note

Exhibit 8 Page 17 is on card 17

TEXAS GAS CORPORATION
HOUSTON, TEXAS

October 15, 1954

Shell Oil Company
Shell Building
Houston, Texas

Gentlemen:

Reference is made to the gas sale contract dated October 15, 1954, effective as of April 30, 1954, between Texas Gas Pipe Line Corporation, as buyer, and Shell Oil Company, as seller, covering the sale by such seller to such buyer of gas produced from the Home Field, Jefferson County, Texas.

In consideration of the sale by Shell Oil Company to Texas Gas Pipe Line Corporation of gas from such field pursuant to such contract, Texas Gas Corporation, a Texas corporation, hereby agrees with Shell Oil Company that Texas Gas Corporation guarantees performance by Texas Gas Pipe Line Corporation of such contract and of the obligations of Texas Gas Pipe Line Corporation under such contract, and Texas Gas Corporation hereby indemnifies and agrees to hold Shell Oil Company harmless from and against all loss, cost, damage, or expense suffered or incurred by Shell Oil Company by reason of the failure of Texas Gas Pipe Line Corporation to comply with its obligations under said gas sale contract of October 15, 1954.

This letter is being executed simultaneously with execution of said contract of October 15, 1954, and it is understood and agreed that said contract of October 15, 1954, together with this letter, supercede and replace all prior agreements, understandings, and negotiations between Texas Gas Pipe Line Corporation and Shell Oil Company and between Texas Gas Corporation and Shell Oil Company relative to the sale and purchase of gas and casinghead gas from the Home Field, Jefferson County, Texas.

Yours very truly,

TEXAS GAS CORPORATION

By _____
Vice President

ACCEPTED AND AGREED TO:

Date: 10-15-54

SHELL OIL COMPANY

By _____

Date: 10-15-54

TEXAS GAS PIPE LINE CORPORATION

By _____
Vice President

4-1

Exhibit 7.

(Opposite ☞)

Note

Exhibit 7 Page 15 is on card 17

Exhibit 8.

(Opposite ☞)

Exhibit 9.

(Opposite ☞)

THIS AGREEMENT made and entered into, effective as of April 30, 1954, by and between Shell Oil Company, a Delaware corporation, with a permit to do business in the State of Texas, hereinafter called "Seller", and Texas Gas Pipe Line Corporation, a Delaware corporation, with a permit to do business in the State of Texas, hereinafter called "Buyer",

WITNESSETH:

WHEREAS, Seller is the owner of various properties producing gas and casinghead gas in and under certain lands in Jefferson County, Texas, situated within what is known as the Nome Field. Buyer proposes to receive or cause to be received by a gatherer for the account of Buyer and to purchase Seller's gas at the delivery points in the field and under the terms and conditions herein provided.

1.

Scope of Agreement

1.01 Subject to the terms and provisions of this contract, Seller commits to the performance hereof and this contract shall cover all of Seller's interest in gas in the non-associated gas reservoirs and in the associated gas or gas caps and the casinghead gas to be produced from the oil reservoirs situated in the Nome Field and underlying the above described properties, more fully described in an exhibit attached hereto and made a part hereof, and this contract is specifically limited and restricted to the gas to be produced during the term hereof from the reservoirs and within the limits and boundaries described in said exhibit.

Construction and Amortization of Line

2.01 To enable Buyer to purchase Seller's gas at the points of delivery hereinafter specified, Buyer shall construct or cause to be constructed the necessary segment of gathering line from such delivery points in the Nome Field, Jefferson County, Texas, southward to a junction with an existing gathering line known as the North Winnie Line, Chambers County, Texas. A portion of the actual cost to Buyer of constructing said aforementioned segment of gathering line shall be amortized on the following basis:

(a) Seller shall pay Buyer 1¢ per MCF of gas delivered by Seller to Buyer under this contract until 80% of the actual cost of such segment has been amortized.

(b) Buyer shall bill Seller each month during the term of this agreement for the amount so due, calculated as aforesaid and based on the quantities of gas delivered and purchased during the preceding month through such line. Seller agrees to pay Buyer within fifteen days after receipt of payment from the Buyer for the gas so delivered during such preceding month.

(c) In connection with the provisions of this Article 2, Buyer shall furnish Seller with full and complete details with respect to the estimated cost of surveying and obtaining right of way, construction costs, etc., including detailed proposed construction contracts and said work shall not be commenced until the parties have mutually agreed with respect to such costs. Within 90 days after completion of such line Buyer shall furnish Seller with a statement reflecting the total actual cost thereof. Seller, at its option, shall have the right to examine and audit the records of Buyer pertaining to the construction of such segment to verify the accuracy and correctness of such cost statement, it being agreed and understood that such costs shall be limited to Buyer's actual direct cost in

constructing such segment with no allowance for overhead, interest on capital or other indirect items of cost.

(d) Buyer shall maintain records of the costs of such segment of line in such manner as to permit determination of the cost of each portion of such segment which may be used by Buyer in transporting or causing to be transported gas other than that produced by Seller and sold to Buyer. In the event gas other than that produced by Seller and sold to Buyer, is at any time or times transported through such segment of line or any portion thereof, prior to Buyer recouping its actual cost as above provided, Buyer agrees to reduce the actual cost of such particular segment or portion to which it would otherwise be entitled to recoup from Seller, by an amount equivalent to 1¢ per MCF for all other gas transported through such segment or portion, to the end that Buyer's recoupment from Seller shall not only be accelerated but thereby reduced.

3.

Term

3.01 This contract shall be for a term commencing upon the first day of the calendar month following the month in which deliveries of gas are commenced hereunder and shall continue for seventy-three hundred (7300) days thereafter unless sooner terminated as herein provided.

3.02 Buyer has applied to the Federal Power Commission for a Certificate of Public Convenience and Necessity in order to establish a market for the gas committed hereto and to perform its obligations to Seller under this contract. Buyer agrees to use due diligence in the furtherance of such application. Seller agrees that it shall promptly apply for and thereafter use due diligence in an effort to secure from said Commission a disclaimer of

jurisdiction by the Commission over the sale of gas hereunder, or in the alternative for the issuance of a Certificate of Public Convenience and Necessity acceptable to Seller in its sole discretion authorizing the sale by Seller provided for in this agreement and in accordance with its terms.

3.03 If Buyer shall fail to receive and accept a Certificate of Public Convenience and Necessity by January 1, 1955, then either party hereto shall have the option at any time thereafter and before such certificate is in fact received and accepted to terminate this agreement in its entirety by giving written notice to the other party. If Seller shall fail to secure a disclaimer of jurisdiction by the Federal Power Commission, or in the alternative shall fail to receive and accept a Certificate of Public Convenience and Necessity by January 1, 1955, then either party hereto shall have the option at any time thereafter and before such disclaimer of jurisdiction, or in the alternative receipt and acceptance of certificate by Seller, to terminate this agreement in its entirety by giving written notice to the other party. Neither Buyer nor Seller shall be obligated to construct or install, or cause to be constructed or installed, any facilities for the delivery, gathering or receipt of gas prior to the time that both parties shall have received and accepted Certificates of Public Convenience and Necessity, or, in the case of Seller only, a disclaimer by the Federal Power Commission of jurisdiction over this sale shall have been obtained.

3.04 Upon receipt and acceptance by both parties of Certificates of Public Convenience and Necessity, or in the case of the Seller a disclaimer of jurisdiction by the Federal Power Commission as referred to in Section

3.03 above, Buyer agrees to proceed with due diligence to construct or cause to be constructed the gathering lines and other facilities provided for herein to enable Buyer to purchase Seller's gas at the points of delivery hereinafter specified, and Seller agrees so to proceed to construct the facilities necessary to enable Seller to deliver gas at such points in accordance with this agreement. Buyer's obligation to commence payment for the daily contract minimum quantity hereunder, in the event Buyer is not then actually taking same, shall commence upon the first day of the calendar month after the expiration of four (4) months following the date upon which the last of such certificates (or disclaimer of jurisdiction in the case of Seller) has been received and accepted, and provided Seller has completed its facilities necessary to enable it to deliver the quantities of gas herein specified at the points of delivery and Seller is then willing and able to deliver such quantities.

3.05 If Buyer has not completed or caused to be completed the gathering lines and other facilities provided for herein to enable Buyer to purchase Seller's gas at the points of delivery hereinafter specified within a period of five months following the date upon which the last of such certificates, or in the case of Seller, disclaimer of jurisdiction, has been received and accepted, and provided Seller has completed the facilities necessary to enable Seller to deliver the quantities herein specified at the points of delivery, and Seller is willing and able to deliver such quantities, then at any time thereafter prior to commencement of actual take of such minimum daily contract quantity by Buyer, Seller shall have the right to take over the construction

9-6

of the facilities of Buyer for Buyer's account, at the expiration of ten (10) days following the date of delivery of written notice to such effect. If Seller so elects to take over and complete the construction of Buyer's facilities, it shall proceed with due diligence to complete same at Buyer's cost and subject to Article 2 hereof without liability to Seller, and so long as Seller shall so proceed with due diligence, Buyer's obligation to pay for gas not taken shall continue hereunder.

4.

Definitions

4.01 The term "year" shall mean an annual period commencing with November 1st of each year of the term provided herein, except if the term hereof commences on some date other than November 1st, the first year hereunder shall be the remaining portion of such year up to November 1st and the last year shall consist of the number of days remaining in the term hereof after November 1, 1974.

4.02 The term "month" shall mean a calendar month.

4.03 The term "day" shall mean a day beginning at 7 o'clock A.M. on each calendar day and ending at 7 o'clock A.M. on the following calendar day.

4.04 The term "gas" as used herein means a mixture of hydrocarbon gases produced (a) from natural gas wells, excluding condensate and other liquids recovered therefrom by Seller in conformity to other provisions of this contract, and (b) from oil wells, and from the same formation or

formations from which crude oil is produced, commonly called 'casinghead gas", but including without distinction returned gas used in the artificial lifting of crude oil produced from such wells.

5.

5.01 Subject to the other provisions hereof, Buyer agrees to purchase and receive, if available, and Seller agrees to sell and deliver during the term of this contract a quantity of gas as hereinafter set forth:

5.02 The term "daily contract quantity" shall mean a quantity of gas equal to the recoverable gas reserves committed hereto, divided by 7300 days. The daily contract minimum averaged over a yearly period shall be 73% of the daily contract quantity, and the daily contract maximum averaged over a yearly period shall be 110% of the daily contract quantity. Subject to Article 6 hereof, Buyer will take the said daily contract minimum quantity averaged over each annual period. The daily contract minimum quantity averaged over each monthly period to be taken, shall not be less than all of the legally produced casinghead gas available for delivery to Buyer plus 500 MCF per day per gas well, provided however, that such minimum shall not exceed 73% of the daily contract quantity. The daily contract maximum quantity averaged over any monthly period shall not exceed 125% of the daily contract quantity. It is expressly understood and agreed, however, that for the first eighteen hundred twenty-five (1825) days of the term hereof, Buyer shall not be required to take or pay for in excess of all of the legally produced casinghead gas available for delivery to Buyer plus 500 MCF per day per gas well or 73% of the daily contract quantity, whichever is the lesser.

5.03 Buyer agrees to take gas ratably on a reserve basis from the wells of Seller as it takes gas from the wells of any other producer of gas in the same field or reservoirs, if available. Notwithstanding the other provisions hereof, Buyer agrees, upon written notice from Seller and submission of reasonable proof of the existence of drainage, to take additional quantities of gas to the end that the properties of Seller shall be protected from any such drainage.

5.04 Buyer and Seller shall as promptly as possible, conduct a joint study of Seller's reserves, including the reserves of casinghead gas, in the reservoirs made subject hereto, for the purpose of arriving at the original daily contract quantity as hereinabove defined. In making this joint study, as well as any future studies or arbitrations of reserves, the volume of gas originally in place in the committed reservoirs containing non-associated gas together with the gas originally in place in any gas caps which may be committed to this contract shall be determined. In each instance this quantity shall then be multiplied by 80% to arrive at an estimate of the originally recoverable gas in such reservoirs. Production from such reservoirs to the date of each such study shall then be deducted. To this quantity shall be added the estimated future production of casinghead gas by Seller from oil reservoirs which are included in the description of reservoirs made subject to this contract. The sum of the reserves as determined above shall constitute the recoverable reserves under Seller's leases as of the original determination of reserves and as of each redetermination thereafter. The original "daily

contract quantity" shall, as provided above, be a quantity of gas equal to the recoverable gas reserves determined as above provided, divided by 7300 days. After each redetermination of Seller's reserves, the daily contract quantity to be effective thereafter shall be the recoverable reserves committed hereto arrived at by joint study and agreement or arbitration as hereinafter provided, divided by the number of days remaining in the term of the contract, and thereafter the daily contract minimum quantity and the daily contract maximum quantity and the monthly flow tolerances shall be adjusted accordingly.

5.05 Upon demand of either party, a joint study in the manner hereinbefore provided will be conducted as to said field, but not more often than once every two years during the term of this contract, unless new information obtained by reason of drilling wells, observation of well performance, or otherwise, reasonably indicates a change of conditions in which event the joint studies or arbitrations will be made at the demand of either party at shorter intervals.

5.06 If, at any time, for a period of six consecutive calendar months, Seller's delivery capacity shall be less than 125% of the daily contract quantity then in effect, then at the option of Buyer, to be exercised by written notice to Seller, the daily contract quantity then in effect may be reduced in proportion to the reduction of Seller's delivery capacity below a quantity equal to 125% of the then effective daily contract quantity. In the event Buyer gives Seller such notice of Buyer's intention to reduce, then Seller shall have

the option for six months thereafter of taking such steps as it may elect to make deliverable the full amount of the gas which Buyer was theretofore entitled to receive, including subjecting to this contract additional reserves of gas reasonably accessible to Buyer's pipe line. In the event Seller does not, in said six months period, make available for delivery such required quantities of gas, then at Buyer's option, to be exercised by notice in writing to Seller, the daily contract quantity then in effect shall be reduced in proportion to the reduction in Seller's delivery capacity below a quantity equal to 125% of the then applicable daily contract quantity.

6.

Make Up Gas

6.01 If, during any annual contract period, Buyer fails to take the minimum quantity of gas which it is required to take during such period, Buyer shall have the right during the next such annual period to make up the deficiencies in volumes of gas not so taken, accounting to Seller on the basis of the tax reimbursement and price in effect at the time of such make up, but in no event shall Seller be required to deliver to Buyer in any one day a quantity in excess of 125% of the daily contract quantity provided for herein. If Buyer fails to make up such deficiencies within said ensuing annual period, Buyer shall, at the expiration of such make up period, pay Seller for such deficiencies on the basis of the price prevailing during the period of such deficiencies. Provided, however, the provisions of this Article shall not apply with respect to quantities of casinghead gas paid for but not taken, as set

forth in paragraph 3.04 hereof.

7.

Quality of Gas

7.01 Seller agrees that the gas delivered hereunder shall at all times comply with the requirements as to quality expressed in this agreement. Buyer agrees that Seller may extract, or permit the extraction of, natural gasoline, butane, propane and other hydrocarbons from said gas or process the gas in any other manner, except that only such methane may be extracted as is necessary to extract the other products, and that Seller may subject, or permit the subjection of, the gas to compression, cooling, cleaning and other processes. At Seller's option, it may enrich the gas delivered hereunder by addition of quantities of butane, propane, and other hydrocarbons of the same type as those permitted to be extracted from such gas. Seller shall not otherwise adulterate the gas and shall not subject the gas to any process or operation other than of a type expressly permitted in this contract, nor shall any such process or operation reduce the heating value of said gas below 1,000 B.T.U. per cubic foot unless prior to delivery of said gas Seller enriches same to meet said minimum as above provided.

7.02 The gas to be delivered hereunder shall have a gross heating value at the point of delivery of not less than 1,000 British Thermal Units per cubic foot. In the event that the total heating value of the gas in any month falls below one thousand British Thermal Units per cubic foot, and in the event Buyer has elected to take such deficient gas, a reduction shall be made in the

total amount which Buyer would otherwise pay for such month if the total heating value were one thousand British Thermal Units or above. The reduction shall be calculated by multiplying said amount so otherwise payable by a fraction, the numerator of which is the deficiency in total heating value per cubic foot below one thousand British Thermal Units, and the denominator of which is one thousand.

7.03 The gas to be delivered hereunder shall not contain more than one grain of hydrogen sulphide per one hundred cubic feet as determined by a quantitative test after presence of hydrogen sulphide has been indicated by qualitative test, which shall consist of exposing a strip of white filter paper recently moistened with a solution of one hundred grains of lead acetate in one hundred (100) cubic centimeters of water, to be exposed to the gas for one and one-half minutes in an apparatus previously purged, through which the gas is flowing at a rate of approximately five cubic feet per hour, the gas not impinging from the jet upon the test paper, and which qualitative test shall be deemed to be satisfied if, after this exposure, the test paper is found not distinctly darker than a second paper freshly moistened with a solution not exposed to the gas. The gas to be delivered hereunder shall not contain more than twenty grains of total sulphur per one hundred cubic feet.

7.04 The gas to be delivered hereunder shall be commercially free of crude oil, free water, solids, dust, and other objectionable substances which would render said gas unsuitable to Buyer's customers and shall not have a temperature in excess of 140° Fahrenheit at the point of delivery.

Except in case of full stream deliveries as herein provided, such gas shall likewise be commercially free of condensate. Seller shall install and operate such conventional field separation facilities as are normally required to make delivery under such specifications at its sole cost and expense, except in case of full stream deliveries. Seller shall not be required to install or operate dehydration facilities.

7.05 In the event Seller shall tender to Buyer gas which does not meet the above specifications, Buyer shall give notice to Seller, who will promptly undertake to correct such condition by reasonably appropriate measures. While such condition continues, Buyer shall have the option:

(a) To accept and pay for such gas subject to reduction in payment as provided in 7.02 above; or

(b) To reject such gas and require Seller to exclude from delivery hereunder, until such time as the condition may be remedied, the gas from any well or wells which causes the gas tendered to fall below such specifications.

7.06 If after making a reasonable effort to correct such condition Seller is unable to remedy the cause thereof and by reason of the failure of a particular well or wells to produce gas meeting the specifications hereof, Buyer rejects and does not take gas from such well or wells for a period of thirty (30) days, then at any time thereafter, while such condition continues and Buyer continues to reject such gas, upon the demand of either party by written notice to the other, the reserves of gas applicable to such well or wells shall thereafter be excluded from the calculations of reserves, and Seller shall have the

right to sell such gas so excluded as it may see fit. In the event that failure of the gas tendered to meet specifications is not due to processing or adulteration by Seller, the rights of Buyer set forth in this paragraph shall be its exclusive remedy.

8.

Price

8.01 Buyer agrees to pay Seller for each one thousand cubic feet of gas sold and delivered to Buyer during each calendar month, or for which payment is due hereunder, as follows:

FIRST FIVE YEAR PERIOD

(a) During the period commencing with the date of first deliveries hereunder or the date provided in paragraph 3.04 hereof whichever occurs first, 13¢.

(b) During the one year period commencing November 1, 1955, 13.2¢.

(c) During the one year period commencing November 1, 1956, 13.4¢.

(d) During the one year period commencing November 1, 1957, 13.6¢.

(e) During the one year period commencing November 1, 1958, 13.8¢.

DURING THE SECOND FIVE YEAR PERIOD 14¢

DURING THE THIRD FIVE YEAR PERIOD 15¢

DURING THE REMAINING TERM OF THIS CONTRACT 16¢

Price Redetermination

9.01 The above prices shall be redetermined for each of the last three five year periods of this contract, but in no event shall such redetermined price be less than the price scheduled for such five year period in the preceding paragraph. The parties hereto shall, six months prior to the commencement of any such price period, begin negotiations to determine whether they can agree on the price applicable to gas delivered during such period; and if, during the succeeding sixty days, they are unable to reach an agreement regarding such redetermined price, such issue shall immediately be submitted to arbitration as herein provided, and the arbitrators shall conclude their proceedings and determine a price within sixty days after submission of the issue to them. In order to establish a redetermined price, the parties or the arbitrators shall determine the three highest prices that are being paid at the beginning of the respective price period by three different transporters for gas produced in Railroad Commission District No. 3 (as presently constituted) for transportation or resale in interstate commerce, under three different contracts with producers under which deliveries of gas are then being made, and the redetermined price shall be the average of such three highest prices but not less than the price shown above for such period. In selecting the three highest prices to be used in such redetermination such prices shall be for quantities up to a daily average quantity of gas equal to 200% of the daily contract quantity in effect at the beginning of such price period for the volumes of gas herein

provided for and adjustment shall be made for differences in dehydration, payment for or cost to Buyer for gathering and compression, and any other matter having a direct bearing on price.

10.

Tax Adjustment

10.01 Seller shall pay all state and federal taxes imposed and at the rates in effect on the effective date of this agreement upon the production and severance of gas and all similar taxes in respect of and applicable to gas delivered hereunder. In the event of any increase in the cost to Seller, occurring after the effective date of this agreement, in respect of or applicable to the gas delivered hereunder and at the prices herein provided occasioned by (a) any increase in the rate of such taxes imposed and in effect on the effective date of this agreement or other taxes hereunder, and/or (b) by the imposition of any new taxes, such as sales, occupation, gathering, export or excise taxes, including any occupation or other tax based upon or measured by the gathering of gas, and/or (c) a substitution of any such taxes, or (d) taxes having a similar effect, which taxes and/or rates are greater than the applicable taxes imposed or at rates in effect on the effective date of this agreement in respect of and applicable to the gas delivered hereunder and at the prices herein provided, then Buyer will pay or reimburse Seller for the net amount thereof paid by Seller, by increasing the price of gas sold subject to such increased tax to the extent of three-fourths of the amount of the increase in cost to Seller occasioned thereby. There shall not be included in such additional or increased

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taxes with which Buyer may be charged, any income tax, general ad valorem property taxes, or other taxes of like nature as may hereafter be imposed. In case any adjustment in taxes is in order, Seller shall, if possible and practical, include the same in current statements and billings, or in all other cases shall, within ninety days after the end of each year, prepare and submit to Buyer a statement thereof, in either case such statement shall set forth the amount of such increase in cost to Seller caused by new or additional taxes that it has paid during the preceding year as the case may be. Upon payment of current billings, or within thirty days after submission of such statement at the end of the year, Buyer shall reimburse Seller to the extent of three-fourths of such increase in cost due to new or additional taxes as herein defined which Seller shall have so paid. Buyer shall pay all taxes imposed upon the gas after receipt thereof by Buyer at the point of delivery.

11.

Favored Nations

11.01 In the event at any time during the term of this contract Buyer purchases gas from any gas producer other than the Seller herein in the Nome Field at a price, or under any other terms and provisions affecting or in any manner having a bearing on price, more favorable to such other gas producer than provided in this contract, Buyer shall thereupon and during the period of such more favorable price, increase the price provided for by the difference between such more favorable price and the price provided for. In making this determination and comparison of prices, adjustment shall be made

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to compensate for differences in tax allowances, methods of computation of quantities, payment for gathering, compression or dehydration, or any other matter having a direct bearing on price.

12.

Reservations of Seller

12.01 Seller's obligation to sell and deliver gas hereunder shall be subject to the rights to use of gas, if any, reserved by Seller's lessors under the respective oil, gas and mineral leases.

12.02 There are further reserved sufficient quantities of gas at all times for use in connection with properties which Seller owns or in which it has an interest in development and operations of every kind conducted in the field and the vicinity thereof. Without limitation by enumeration, such uses shall include drilling and deepening of wells, gas lifting of oil, pressure maintenance and repressuring of formations, fuel for operations of Seller and its subsidiary or affiliated companies, pipelines, compressors, dehydrators, gasoline or extraction plants, water stations, salt water disposal systems, and camps.

12.03 If, as a result of Seller's use of a quantity of such gas in its operations for pressure maintenance and repressuring of formations, Buyer does not receive during the twenty (20) years primary term hereof in the aggregate as much gas as Buyer would otherwise have been entitled to receive during such primary term under the other provisions of this agreement, Buyer shall have the right to purchase and receive from Seller under this agreement,

commencing immediately after the expiration of such primary term, a volume of gas equal to the difference between (i) such total volume Buyer would have been entitled to receive under the provisions of this agreement had no gas been used for such pressure maintenance and re-pressuring of formations, and (ii) the total volume of gas actually received by Buyer. In making the calculations provided in the preceding sentence, there shall be included in item (ii) the full volume of gas actually received by Buyer during the primary term at the points of delivery herein provided, whether delivered in accordance with all of the provisions hereof or not, and there shall not be included in item (i) any quantity or quantities of gas available hereunder which Buyer may have failed to receive for reasons other than Seller's use of same in pressure maintenance and re-pressuring of formations. The gas to be furnished to make up deficiencies, if any, resulting from such pressure maintenance and re-pressuring of formations shall be delivered by Seller from the reservoirs committed hereto and any additional reservoirs into which the gas has been injected for any pressure maintenance or re-pressuring operations and shall be purchased by Buyer under all of the price, quantity and other provisions of this agreement in effect at the time of delivery and receipt of such deficiency gas, or, in the case of price, at such higher price as may be fixed or determined at the time by any State or Federal authority, if any, having jurisdiction, and this agreement shall continue in force for such additional period of time as shall be necessary to enable Buyer to obtain delivery of such accumulated deficiency of gas volume by its taking daily quantities of gas in accordance with the quantity provision of this agreement then in effect.

12.04 Subject to the provisions of Article 23 hereof, in the event Seller desires to process the gas or cause it to be processed for the recovery of natural gasoline or other liquid hydrocarbons before delivering the gas to Buyer, the right to do so is specifically reserved by Seller as provided in paragraph 7.01 hereof, and the residue gas remaining after such processing shall be delivered by Seller to Buyer at a mutually agreeable central point in the field, in lieu of gas direct from the wells, provided, however, that the composition thereof will not be changed so that such residue gas will not meet the specifications of this agreement as to pressure, heating value, sulphur content and otherwise.

12.05 Seller reserves the right to operate its leases free from any and all control by Buyer in such manner as Seller in its sole discretion deems advisable, including without limitation the right to drill any new wells, to repair, rework or recomplete old wells, to renew, extend, surrender, release or terminate in whole or in part any lease in said field and to abandon any well not deemed by Seller capable under normal methods of operation of producing oil, gas or casinghead gas in quantities profitable to Seller. Subject to paragraph 14.02 Seller may remove from this contract any well not producing gas at pressures sufficient to meet the pressure requirements of this contract, even though producing oil in quantities profitable to Seller, unless Buyer exercises its privilege of installing compressors for the purpose of receiving such gas. Nothing in this agreement shall be construed as requiring Seller to carry on drilling, reworking, reconditioning or other operations in the field

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against its will, or to produce any well or wells at a rate which Seller considers harmful to the well or reservoir or at a rate in excess of that permitted by applicable laws, orders, rules and regulations of governmental agencies having jurisdiction in the premises.

12.06 The provisions of this agreement shall not in any case limit or restrict Seller from entering into pooling agreements, unitization agreements and operating agreements affecting the area covered hereby, but shall in such event extend and apply to the production of gas from any such unit allocable to each party joining as a Seller herein to the extent that such interest is derived from the Seller's existing leases subject to this agreement.

12.07 Although Seller in good faith believes that it owns title to the gas and gas rights affected hereby, it makes no warranty of title thereto except as to gas delivered as contained in Article 17 hereof. In the event of failure of Seller's title to the gas rights in any tract or interest therein, then this contract shall no longer apply thereto, and the obligations of the parties shall be reduced to such extent except as to gas theretofore delivered. Pending settlement of litigation involving Seller's right to deliver gas hereunder from any tract, Seller may, at its election, make no deliveries from such tract.

13.

Delivery Points

13.01 The quantities of gas herein provided for shall be delivered by Seller to Buyer at the following designated points:

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(a) with respect to casinghead gas, at a central point in field, to be as mutually agreed upon; provided, however, at Seller's option, exercised by written notice to Buyer, the point of delivery for casinghead gas may be changed to the outlet of Seller's facilities for the separation of oil from casinghead gas for each of Seller's oil wells covered by this contract.

(b) with respect to gas well gas, at each of such gas wells or points adjacent thereto, to be mutually agreed upon.

14.

Delivery Pressure

14.01 Such gas shall be delivered by Seller at each point of delivery at a pressure sufficient to enter Buyer's line not to exceed 1,000 psig, provided, however, so long as Sun Oil Company is making deliveries to a gatherer of Buyer of a quantity of North Winnie Gas under the terms of presently existing agreements, the gas delivered hereunder shall be delivered at pressure sufficient to enter Buyer's line not to exceed 400 psig. During this particular period, Seller shall pay such gatherer 1¢ per MCF for compressing all gas delivered hereunder.

14.02 Seller shall not be obligated to install compressors to make deliveries of gas from gas wells. Seller shall be obligated, however, to install and operate compressors necessary for the delivery of any casinghead gas which is considered in arriving at any estimate of reserves made subject to this contract in the determination of the daily contract quantity hereunder, for such period of time as the installation and operation of such compressors is economically feasible, in the judgment of Seller, exercised in good faith. Buyer shall, however, have the right at its option to install and operate compressors at its

cost and expense for the purpose of compressing any gas previously made subject to delivery hereunder, and in like manner Seller shall have the right at its option, but shall not be required, to install compressors for delivering gas well gas previously made subject hereto at its cost and expense. Subject to Seller's obligation to compress casinghead gas as hereinabove provided, in the event at any time Seller shall elect not to install any compressors or continue to operate same and Buyer likewise shall elect not to install and operate compressors, such gas as may thereupon become undeliverable because of lack of sufficient pressure may be sold by Seller to third parties free of this contract and the reserves from which such gas is furnished shall thereafter be released from the operation hereof.

15.

Metering Facilities, Measurements and Tests

15.01 Buyer agrees to install, operate and maintain the metering facilities necessary to measure the volumes of gas delivered at the respective delivery points as herein provided.

15.02 In the event Seller exercises its option as set forth in paragraph 13.01 (a) hereof, by reason of the fact that quantities of casinghead gas can not be accurately measured in small fluctuating volumes, which will be the case if such delivery points are so revised, it is understood and agreed that for the sole purpose of determining quantities of such casinghead gas so delivered and to be paid for, same shall be measured by metering facilities at a central point in the field, located downstream of the point where the

respective streams of casinghead gas are commingled, the quantity of such gas so measured at such point to be allocated back to the respective delivery points on the basis of the measured volumes at such respective delivery points.

15.03 The unit of the gas deliverable under this agreement shall be one thousand cubic feet (referred to herein as MCF). One cubic foot of gas shall be the amount of gas contained in one cubic foot of space under an absolute pressure of 14.65 pounds per square inch and at a temperature of sixty degrees Fahrenheit.

15.04 The volume of gas delivered by Seller hereunder shall be measured at the orifice meter or meters of Buyer at the point of delivery which, together with any buildings and all other collateral equipment required for the determination of volume, shall be installed and maintained by Buyer at its cost and expense. Seller grants Buyer the right of ingress and egress to its properties in the field for the purposes of this contract, insofar as its leases and other contracts permit. Orifice meter or meters shall be installed and operated in accordance with the specifications prescribed in Gas Measurement Report No. 2 dated May 6, 1935, of the Natural Gas Department of the American Gas Association and any subsequent amendments thereto, if such amendments are mutually acceptable to the parties hereto, or by any other method agreed upon between the parties hereto; and it is hereby agreed that the values of the Reynolds number factor and the expenson factor shall be assumed to be one (1).

15.05 The atmospheric pressure for the measurement of all gas hereunder shall be assumed to be 14.7 pounds per square inch absolute, or such other figure as may be established by applicable order, rules, regulation or finding of the Railroad Commission of Texas.

15.06 The temperature of the gas flowing through the meters shall be determined by the continuous use of a recording thermometer at point of delivery, installed at Buyer's expense, so that it may properly record the temperature of the gas flowing through the meters. The arithmetical average of the hourly temperature recordings during the time gas was actually passing shall be used to make proper correction in volume computations for such point of delivery.

15.07 The specific gravity of the gas flowing through the meters shall be determined by a spot test to be made at the delivery point at approximately the end of each month by the balance method and using instruments satisfactory to both parties for such purpose. The specific gravity reading so determined shall apply on all quantities of gas sold and delivered during the succeeding monthly period. Buyer shall supply and operate at its own expense the necessary equipment for the making of such spot checks or tests. The specific gravity of full stream deliveries shall be as determined in paragraph 23.03 hereof.

15.08 The deviation of the gas from the Ideal Gas Laws at the pressures and temperatures under which said gas is delivered by Seller to Buyer shall be determined by methods in accordance with bulletins of the

California Natural Gasoline Association setting forth tentative standard methods for calculation of high pressure gas measurement, or by such other methods as may be mutually agreed upon, and approved by the Railroad Commission of the State of Texas. Upon demand of either party, such actual deviation may be determined by joint tests at intervals of six months, or as much more often as is found necessary in practice, or in order to comply with applicable laws and resulations. Each such calculation shall determine the corrections to be used in computations for the measurement of natural gas deliveries hereunder until the next test.

15.09 Seller may install, maintain and operate check meters and collateral equipment which shall be so installed as not to interfere with the operation of facilities through which Buyer receives gas, at or near the point of delivery. Buyer shall have access to such check measuring equipment at all times during business hours, but the reading, calibrating and adjustment thereof, and the changing of charts, shall be done only by the employees or agents of Seller.

15.10 In the event a meter or other measuring instrument is out of service or registering inaccurately, the volume of gas delivered hereunder shall be estimated (a) by using the registration of any check meter or meters or other instrument if installed and accurately registering, or in their absence, (b) by correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation, and the resulting error in measurement of volume is in excess of the permissive margin of error hereinafter provided, or,

if neither such method is feasible, (c) by estimating the quantity from deliveries during a period under similar conditions when the meter or other instrument in question was registering accurately, or by any other method agreed upon.

15.11 From time to time and at least once a month, on a date as near the first of the month as practicable, the accuracy of Buyer's meters shall be verified in the presence of representatives of both Seller and Buyer and the parties shall jointly observe any adjustments which are made in such meters. If either party at any time shall notify the other that it desires a special test of any meter, the other party shall cooperate to secure immediate verification of the accuracy of the meter and joint observation of any adjustments. Each party shall give to the other notice of the time of all tests of meters reasonably in advance of holding of tests in order that the other party may conveniently have its representative present. Verification of the accuracy of other instruments affecting the measurement of volume shall be made by similar joint observation and adjustment from time to time upon request of either party.

15.12 If, upon any test of measuring equipment, the readings of such instrument or instruments are found to be no more than two per cent (2%) in error, previous readings of such instrument shall be considered correct in computing quantities of gas delivered hereunder, but such meter or other instrument shall be adjusted at once to read accurately. If upon any test any meter or other instrument affecting measurement is found to be inaccurate by an amount exceeding two per cent (2%) at a reading corresponding to the average conditions of flow for the period since the last preceding test, such

meter or instrument shall be adjusted at once to read accurately. Unless such inaccuracy, when taken in combination with any ascertained inaccuracy of other instruments affecting measurement during the same period of time, shall have resulted in an error in measurement of volume in excess of two per cent (2%), no correction of previous readings of such instrument shall be required. If such accumulated inaccuracy of the several instruments during such period shall have resulted in an error exceeding two per cent (2%) of the total measured volume, then all previous readings of such instruments found to have been measuring inaccurately shall be corrected to zero error for such period as is known definitely or agreed upon, whether or not the individual errors of each instrument would otherwise have required correction of the previous readings thereof. In case the period of error is not known definitely or agreed upon, correction shall be for a period extending over one-half (1/2) of the time elapsed since the date of the last test of meters, not exceeding a correction period of sixteen (16) days.

15.13 The heating value of each cubic foot of the gas delivered hereunder shall be assumed to be at least one thousand (1,000) British Thermal Units per cubic foot, unless, at the option of Buyer, it is desired to more accurately determine such heating value by the use of spot tests in the following manner. The total heating value of the gas may in such event be determined by taking samples of the gas at the delivery point at such times as may be requested by either party, but not more often than once each month, and having the British Thermal Unit content thereof per cubic foot determined by an

accepted type of calorimeter, for a cubic foot of gas at temperature of sixty degrees (60°) Fahrenheit when saturated with water vapor and at an absolute pressure equivalent to thirty (30) inches of mercury at thirty-two degrees (32°) Fahrenheit. The British Thermal Unit content per cubic foot so determined shall apply on all quantities of gas sold and delivered during the succeeding monthly period and until the next determination. Buyer shall supply and operate at its own expense the necessary equipment for making such spot checks or tests.

15.14 Either party shall have the right to be represented at and to participate in all tests of gas delivered hereunder or of any equipment used in measuring or determining the nature or quality of such gas and to inspect, at any time during business hours, any and all equipment used for the measurment or determination of the nature or quality of gas delivered hereunder.

15.15 From time to time as requested, and during business hours, the accuracy of the measuring party's collateral equipment shall be verified in the presence of representatives of both Seller and Buyer, and the parties shall jointly observe any adjustments which are made in such collateral equipment. If, upon any test, any collateral equipment shall be found in error, such equipment shall be adjusted at once to read accurately within the limits prescribed by the manufacturer.

15.16 Each party hereto shall cause to be preserved for a period of at least one (1) year all test data, charts and other similar records.

16.

Billing and Payment

16.01 On or before the 10th day of each month, Buyer shall render to Seller a statement showing the quantities of gas delivered hereunder on each day during the preceding calendar month, the amounts payable hereunder therefor, the amount of any taxes required by law to be paid by Buyer on such quantities of gas delivered hereunder, which taxes are in whole or in part chargeable to Seller hereunder, and any other information required in the computation of such amounts. Seller shall render to Buyer on or before the 15th day of each month an invoice for the gas delivered during such preceding calendar month, less any deductions authorized hereunder for taxes chargeable in whole or in part to Seller but required by law to be paid by Buyer. Buyer shall, on or before the 25th day of the current month, make payment to Seller for the amounts shown to be due by such invoices.

16.02 Should Buyer fail to pay the full amount due Seller for such preceding calendar month on or before the 25th day of the current month, and any amounts due on an annual basis on or before the 25th day of the first month after the end of each year hereof, interest thereon shall accrue at the rate of six per cent (6%) per annum from the date when such payment is due until the same is paid. If such failure to pay continues for thirty (30) days, Seller may suspend deliveries of gas hereunder, or may terminate this agreement, at its option, but the exercise of such rights shall be in addition to any and all other remedies available to Seller. It is agreed, however, that if Buyer's failure

to pay any amount claimed due hereon by Seller is the result of a bona fide dispute, the nature of such dispute to be evidenced by written statement of Buyer delivered to Seller, and Buyer shall likewise furnish security for the payment of such amounts as may be determined to be due after settlement of such dispute, the provisions hereof for suspending deliveries of gas or termination of this agreement shall not apply until the final determination of such dispute. Interest on unpaid amounts as provided above in this paragraph shall be due only on such amounts as shall be determined finally to be due to Seller during such period of non-payment.

16.03 Buyer shall mail or deliver to Seller for checking and calculation, all volume, temperature and other charts and records used in the measurement of gas delivered hereunder within fifteen (15) days after the last chart for each billing period is removed from the meters. Such charts shall be mailed or returned to Buyer within thirty (30) days after receipt thereof by Seller.

16.04 Each party shall have the right at all reasonable times to examine the books, records and charts of the other party to the extent necessary to verify the accuracy of any statement, charge, computation or demand made under or pursuant to any of the provisions of this contract. Any error therein not called to the attention of the parties or protested within two (2) years shall be considered waived.

17.

Warranty of Title

17.01 Seller hereby warrants title to all gas sold and delivered hereunder and the right of Seller to sell the same; and Seller warrants that all such gas is owned by Seller free from all liens and adverse claims, including liens to secure payment of production taxes, severance taxes, and other taxes. Seller shall at all times have the obligation to make settlements for all royalties due and payments to the mineral and royalty owners under Seller's leases, as modified by such unitization agreements, and other documents as may appear of record or otherwise be binding upon Seller, and in accordance with the terms of the respective leases, and to make settlements with all other persons having any interest in the gas sold and delivered hereunder, and Seller agrees to indemnify Buyer and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said gas or to royalties, taxes, license fees or charges thereon which are payable by Seller hereunder. Buyer shall promptly notify Seller of all such claims, etc.

18.

Default

18.01 It is covenanted and agreed that if either Buyer or Seller shall fail to perform any of the covenants or obligations imposed upon it or them under and by virtue of this agreement, then in such event the other party hereto may, at its option, terminate this agreement by proceeding as follows:

18.02 The party not in default shall cause a written notice to be served upon the party claimed to be in default, stating specifically the default and cause of terminating this agreement, if such default is not remedied. Thereupon the party in default shall have thirty (30) days after the service of the aforesaid notice in which to remedy or remove the cause or causes specified in the notice for terminating the agreement, and if within the said period of thirty (30) days the party in default does so remedy or remove said cause or causes, then such notice shall be considered withdrawn, and this agreement shall continue in full force and effect. In case the party in default does not so remedy or remove the cause or causes within said period of thirty (30) days, then the party not in default may, within the next thirty (30) days terminate this agreement by giving notice in writing to such effect to the party in default, which termination shall be effective thirty (30) days from date of said notice.

18.03 Any cancellation under this article shall be without prejudice to any other rights or remedies of the parties hereunder. Without waiver of any other remedies to which the party not in default may be entitled for violations of this agreement, the failure of any party to exercise the right of cancellation contained in this article at any time shall not constitute a waiver of such party's rights under subsequent defaults. The provisions of this article shall not be applicable to the provisions of Paragraph 3.03 hereof with respect to either party's option of termination at the inception of the contract where specifically prescribed hereinabove.

19.

Force Majeure

19.01 Neither party shall be liable to the other for any act, omission or circumstance (other than the failure to make payments of amounts due hereunder) occasioned by or in connection with, or in consequence of, any acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, sabotage, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, floods, storms, fires, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, well blowouts, freezing of wells or delivery facilities, craterings, and the order of any court or governmental authority having jurisdiction in the premises, or by any other cause,whether of the kind herein enumerated or otherwise, not within the reasonable control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.

19.02 The settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and the above requirement that any force majeure shall be remedied with the exercise of diligence shall not require the settlement of strikes or lockouts by acceding to the demands of opposing parties.

19.03 Such causes or contingencies affecting the performance of this agreement by any party hereto shall not relieve such party of liability in the event of its failure to use due diligence to remedy the situation and remove

9-75

the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting the performance of this agreement relieve any party hereto from its obligations to make payments of amounts then due hereunder, nor shall such causes or contingencies relieve any party of liability unless such party shall give notice and full particulars of the same in writing or by telegraph to the other party as soon as possible after the occurrence relied on. The provisions of this paragraph shall not be construed to impose any obligation upon Seller or Buyer which is expressly stipulated against by other provisions of this contract, and it is expressly understood that nothing herein contained shall impair the rights of a party to cancel this agreement under the provisions of Article 3 hereof.

19.04 In the event that the taking of gas hereunder is not commenced or is interrupted in whole or in part, whether by reason of the operation of force majeure, or for any other reason beyond the control of Seller, it shall have the right from time to time, in addition to all other rights and remedies, to sell to others or otherwise dispose of or use the gas subject to this contract, free from the provisions hereof, as Seller deems fit, to the extent of Buyer's failure to accept deliveries hereunder. Seller's commitment, disposal or use thereof shall be such as to enable Seller to commence or resume deliveries within fifteen (15) days after written notice from Buyer that Buyer is ready to commence or resume or receive deliveries hereunder. The exercise of this right to sell to others shall not be construed as impairing Seller's right to cancel this agreement in the manner otherwise provided herein in the event of default

by Buyer not excused by force majeure.

20.

Arbitration

20.01 In the cases herein for which arbitration is specifically provided, the matter in question may, on demand in writing by either party hereto made upon the other party, be submitted to arbitration. The party making such demand shall appoint an arbitrator in writing at the time the demand for arbitration is made. The other party shall, within thirty (30) days after the making of such demand, appoint an arbitrator, and give notice in writing of such appointment to the party making the demand, failing in which the contention of the party making the demand for arbitration as stated in the demand shall be taken as confessed. Should an arbitrator be appointed by each of the parties hereto as herein provided, the two arbitrators so selected shall select a third arbitrator or umpire within thirty (30) days after the giving of notice of the appointment of the second arbitrator. Should the two arbitrators selected by the parties hereto fail so to agree upon a third arbitrator or umpire, either party hereto may upon fifteen (15) days written notice to the other party apply to the senior judge of the Fifth Federal Judicial Circuit for the appointment of such third arbitrator or umpire. The arbitrators so appointed shall be men qualified to make the determinations involved and shall not be interested in or connected with any party, with each other, or with the controversy. They shall promptly hear any evidence which the parties may desire to submit, without limitation to technical rules of evidence controlling legal actions, and may likewise make

such investigations of their own and employ their own opinions, skill and knowledge as the may see fit. The three arbitrators selected in the manner herein provided shall constitute a Board of Arbitration, and the decision of such Board arrived at by majority vote, which decision shall be made and reported within sixty (60) days from the date of the appointment of said third arbitrator, and shall be final and absolutely binding and conclusive upon both parties hereto, said arbitrators being hereby vested with the powers of appraisers and arbitrators under the laws of the State of Texas. The findings of the Board of Arbitration shall be in writing and a copy thereof filed with each of the parties hereto.

20.02 Each party shall pay the expense of the arbitrator selected by or for it and all other costs of the arbitration shall be divided equally between the parties.

21.

Notices

21.01 Notices and statements provided to be given hereunder shall be deemed sufficiently given and served when and if deposited in the United States Mail, postage prepaid and addressed to the respective parties at the addresses stated below or to such other addresses as they shall hereafter designate in writing:

Shell Oil Company
P. O. Box 2099
Houston 1, Texas

Texas Gas Pipe Line Corporation
Prudential Building
Houston 25, Texas

22.

Assignability

22.01 The provisions hereof shall extend to, be binding upon and inure to the benefit of the parties hereto and to their heirs, successors, assigns and legal representatives.

22.02 It is specifically provided, however, that no assignment of this contract may be made by Buyer without the prior consent in writing of Seller. Buyer may, however, without such consent, assign this contract to secure the payment of indebtedness incurred or to be incurred, or for any purpose to a subsidiary, affiliate, successor, or controlling company of Buyer. Any breach of this Agreement will be grounds for immediate cancellation of this contract, at Seller's election and cumulative of any other remedies available to it, if Buyer does not terminate said assignment after thirty (30) days' notice to it to do so.

23.

Full Stream Deliveries

and

Price on Condensate and Flash Vapors

23.01 For a period of one year from date of first deliveries hereunder, the quantities of gas well gas deliverable hereunder shall be delivered by Seller full stream, without extractions of gasoline or other liquifiable hydrocarbons, provided, however, either Seller or Buyer shall have the right to terminate such full stream deliveries by giving the other party thirty days written

notice prior to the expiration of such first year. In the event neither party gives such notice, such full stream deliveries shall continue thereafter on a year to year basis, subject, however, to termination at the expiration of any subsequent year, by giving of the thirty days prior written notice by either party, as above provided.

23.02 Buyer agrees, at its expense, to install and maintain any additional facilities required or that may be necessary to receive the gas to be delivered from each of Seller's gas wells and Seller agrees at its expense to install and maintain a high pressure water knock out designed to operate at existing wellhead pressure, heater, and high-low safety valve for each such gas well; provided that a heater shall be installed only in those cases in which the temperature and/or other conditions of the gas make it necessary to insure accurate metering or to insure continued operation of the facilities through which gas is being delivered into Buyer's line.

23.03 During any period of full stream deliveries hereunder, each gas well shall be tested each three months by Buyer or any mutually agreeable engineering testing organization, using a portable full scale conventional separator, operating at pressure of 950 pounds and a temperature of 70° Fahrenheit, to determine the quantities of separator overhead gas (including flash vapors), stock tank condensate per million cubic feet of full stream gas, and full stream specific gravity. For all of such stock tank condensate, Buyer shall pay Seller the average of the prices paid for condensate of the same or similar gravity and quality by Humble Oil and Refining Company,

Gulf Refining Company and Sun Oil Company or their affiliated purchasing companies in the fields served by pipe lines in the Texas Gulf Coast territory. For all flash vapors Buyer shall pay Seller on the basis of the price herein provided for as to gas.

24.

Regulatory Bodies

24.01 This contract is subject to all present and future valid orders, rules and regulations of any governmental body having jurisdiction.

EXECUTED in duplicate originals, this the 15th day of October, 1954, but effective as of April 30, 1954.

ATTEST:

SHELL OIL COMPANY

By: _____
Vice President

_____
Assistant Secretary

SELLER

ATTEST:

TEXAS GAS PIPE LINE CORPORATION

By: _____
Vice President

_____
Secretary

WILLIAM N. BONNER, JR.

BUYER

9-41

STATE OF TEXAS |
|
COUNTY OF HARRIS |

BEFORE ME, the undersigned authority, on this day personally appeared JOHN T. ASHFORD, Vice President of TEXAS GAS PIPE LINE CORPORATION, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of TEXAS GAS PIPE LINE CORPORATION.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 15 day of October, A. D., 1954.

Marjorie Brooks
Notary Public in and for
Harris County, Texas.

STATE OF TEXAS |
|
COUNTY OF HARRIS |

BEFORE ME, the undersigned authority, on this day personally appeared E. D. CUMMING, Vice President of SHELL OIL COMPANY, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of SHELL OIL COMPANY.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 15 day of OCTOBER, A. D., 1954.

Evelyn Crowell
Notary Public in and for
Harris County, Texas.

9-4

EXHIBIT

This contract applies to the legally produced gas from the following reservoirs and to the extent of Seller's interest therein, to-wit:

All non-associated, associated, and casinghead gas reserves found in the Nome Field, Jefferson County, Texas, above the base of the "x" sand (Nodosaria), more particularly described as that sand which occurs between the electric log depths of 7825 and 7976 feet in the Sun Oil Company's Hugh Long #3 Well, located in the John Blair Survey, Abstract 4, Jefferson County, Texas.

On a plat attached hereto as Exhibit "A" there is shown colored in yellow, within hatched lines, the surface boundaries of the properties of Shell Oil Company, which are made subject to the foregoing contract, to the extent of the gas zones and reservoirs as set forth above.

Note

Page 19 Exhibit A is on card 17

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Exhibit 10.

(Opposite ☞)

EXHIBIT 10 P.E.I SHEET 1

Southern PETROLEUM Laboratories

RESEARCH AND DEVELOPMENT
CONSULTING CHEMISTS AND ENGINEERS
5302 LAWNDALE HOUSTON 3 TEXAS

W A FRIER,
MEMBER OF
A.I.M.E.A.P.I.

CERTIFICATE OF ANALYSIS No. 11225

SAMPLE MARKED: "GAS FROM CARPENTER No. 10, NOME FIELD, 1800 PSIG @ 60°F. TAKEN ON NOVEMBER 22, 1954."

SUBMITTED BY: MR. ED THOES ON NOVEMBER 22, 1954

FOR: SHELL OIL COMPANY
P. O. Box 2099
HOUSTON, TEXAS

INVOICE No. 4038

NOVEMBER 25, 1954

ANALYSIS:	MOL %	GPM @ 14.696 PSIA
CARBON DIOXIDE	0.10	
METHANE	99.66	
ETHANE	0.20	
PROPANE	0.02	0.005
ISO-BUTANE PLUS	0.02	0.007
	100.00	0.012

SP. GR. @ 60° F. (AIR = 1) . . 0.5575

B.T.U./CU. FT. @ 60° F. AND 14.696 PSIA:
DRY BASIS 1014
WET BASIS 996

TOTAL SULFUR CONTENT . . . . . 1.180 GRAINS/100 CU. FT.

SOUTHERN PETROLEUM LABORATORIES

BY R. H. FAUSSET

10-1

P.21 SHEET 2

Southern PETROLEUM Laboratories

RESEARCH AND DEVELOPMENT
CONSULTING CHEMISTS AND ENGINEERS
5502 LAWNDALE HOUSTON 3 TEXAS

W A FRIER
[illegible]

CERTIFICATE OF ANALYSIS No. 11226

SAMPLE MARKED: "CASINGHEAD GAS FROM CARPENTER No. 13, NOME FIELD, 975 PSIG @ 60° F., TAKEN ON NOVEMBER 22, 1954."

SUBMITTED BY: MR. ED THOES, ON NOVEMBER 22, 1954

FOR: SHELL OIL COMPANY
P. O. BOX 2099
HOUSTON, TEXAS

INVOICE No. 4038

NOVEMBER 23, 1954

ANALYSIS:	MOL %	GPM @ 14.696 PSIA
CARBON DIOXIDE	0.10	
METHANE	92.61	
ETHANE	3.76	
PROPANE	2.09	0.573
ISO-BUTANE	0.52	0.170
N-BUTANE	0.54	0.170
ISO-PENTANE	0.09	0.033
N-PENTANE	0.06	0.022
HEXANES	0.14	0.057
HEPTANES PLUS	0.09	0.041
	100.00	1.066

SP. GR. @ 60° F. (AIR = 1). . . 0.6210

B.T.U./CU. FT. @ 60° F. AND 14.696 PSIA:
DRY BASIS 1110
WET BASIS 1091

TOTAL SULFUR CONTENT . . . . 1.802 GRAINS/100 CU. FT.

SOUTHERN PETROLEUM LABORATORIES

BY [signature]
W. H. FAUSSET

P. 21 SHEET 3

Southern PETROLEUM Laboratories

RESEARCH AND DEVELOPMENT
CONSULTING CHEMISTS AND ENGINEERS

5502 LAWNDALE, HOUSTON 3, TEXAS

W. A. FRIER,
MEMBER OF
AIMEGAPI

CERTIFICATE OF ANALYSIS NO. 11238

SAMPLE MARKED: "CASINGHEAD GAS FROM ALMA CARPENTER UNIT "B" WELL NO. 1, NOME FIELD, 30PSIG AT 70° F. TAKEN 11-24-54 BY ED THOES.

SUBMITTED BY: MR. E. THOES ON NOVEMBER 24, 1954.

FOR: SHELL OIL COMPANY
P. O. BOX 2099
HOUSTON, TEXAS

INVOICE NO. 4039

NOV. 26, 1954

ANALYSIS:	MOL%	GPM AT 14.696 PSIA
CARBON DIOXIDE	0.20	
NITROGEN	NIL	
METHANE	93.14	
ETHANE	3.53	
PROPANE	1.83	0.502
ISO-BUTANE	0.45	0.147
N-BUTANE	0.47	0.148
ISO-PENTANE	0.08	0.029
N-PENTANE	0.05	0.018
HEXANES	0.19	0.078
HEPTANES PLUS	0.06	0.028
	100.00	0.950

SP. GR. AT 60° F. (AIR = 1) 0.6160

B.T.U./CU. FT. AT 60° F. AND 14.696 PSIA:
DRY BASIS 1098
WET BASIS 1079

TOTAL SULFUR . . . . . 1.624 GRAINS/100 CU. FT.

SOUTHERN PETROLEUM LABORATORIES

BY Richard H Fausset
R. H. FAUSSET

10-3

FIELD AND LABORATORY TESTING OF CRUDE AND GAS BLENDING TREATING AND TESTING OF PETROLEUM PRODUCTS

Southern PETROLEUM Laboratories

RESEARCH AND DEVELOPMENT
CONSULTING CHEMISTS AND ENGINEERS
5502 LAWNDALE, HOUSTON 3 TEXAS

W. A. FRIER,
MEMBER OF
AIME

CERTIFICATE OF ANALYSIS NO. 11241

SAMPLE MARKED: "CASINGHEAD GAS FROM PAGGI WELLS NOS. 3, 6, AND 7, NOME FIELD. 65 PSIG AT 60° F., TAKEN NOV. 24, 1954 BY MR. ED THOES."

SUBMITTED BY: MR. E. THOES ON NOVEMBER 24, 1954.

FOR: SHELL OIL COMPANY
P. O. BOX 2099
HOUSTON, TEXAS

INVOICE NO. 4039
NOV. 26, 1954

ANALYSIS:	MOL%	GPM AT 14.696 PSIA
CARBON DIOXIDE	0.20	
NITROGEN	NIL	
METHANE	85.33	
ETHANE	5.64	
PROPANE	4.40	1.207
ISO-BUTANE	1.52	0.496
N-BUTANE	1.57	0.494
ISO-PENTANE	0.55	0.201
N-PENTANE	0.33	0.119
HEXANES	0.35	0.144
HEPTANES PLUS	0.11	0.051
	100.00	2.712

SP. GR. AT 60° F. (AIR = 1) . . . 0.7059

B.T.U./CU. FT. AT 60° F. AND 14.696 PSIA:
DRY BASIS 1233
WET BASIS 1211

TOTAL SULFUR . . . . . 1.959 GRAINS/100 CU. FT.

SOUTHERN PETROLEUM LABORATORIES

BY Richard H. Faubset
R. H. FAUBSET

FIELD AND LABORATORY TESTING OF CRUDE AND GAS — BLENDING TREATING AND TESTING OF PETROLEUM PRODUCTS

Exhibit 11.

(Opposite ☞)

NOTE

Page 23 Exhibit 11 is on card 18

Items Included by Reference.

The following Items A and B were introduced at the hearing by reference, the same being excerpts from Exhibits 11 and 11-A in the proceeding before the Federal Power Commission at Docket No. G-2405.

ITEM A

EXHIBIT 11

This exhibit is entitled, "Gathering Agreement Between Texas Gas Pipe Line Corporation and Texas Gas Corporation, Dated April 7, 1954". In the contract Texas Gas Pipe Line Corporation is designated as "Pipe Line" and Texas Gas Corporation is designated as "Gatherer". The contract recites that Pipe Line owns certain contracts for the purchase of gas and Gatherer owns a gathering system in the fields or near the fields covered by the contracts.

The parties agree that promptly after notice from Pipe Line that Pipe Line has secured from the FPC either (1) a disclaimer of jurisdiction or (2) Certificate of Public Convenience and Necessity, on conditions acceptable to Pipe Line, Gatherer agrees to build and put in operation the necessary facilities. If no notice is given by August 1, 1954, either party can terminate on 30-days notice. The following paragraphs are copied verbatim from the contract.

"II. *Quantity*—Gatherer agrees to gather and receive for the account of Pipe Line, at each point of delivery specified in the Gas Purchase Contracts, the quantities of gas which Pipe Line elects to purchase from time to time under said Gas Purchase Contracts; provided, however, that Gatherer shall not be obligated to gather or receive in any day a quantity of gas from any seller greater than the maximum daily quantity such seller is then obligated to deliver to Pipe Line under the terms and provisions of the Gas Purchase Contract between such seller and Pipe Line. Pipe Line agrees to notify Gatherer; on or before the 20th day of each calendar month, as to the estimated quantity of gas Pipe Line desires to purchase and have Gatherer gather under each Gas

Purchase Contract during the succeeding calendar month. Pipe Line further agrees to give Gatherer prompt notice of any anticipated request for a change in the rate of takings of gas under any of said Gas Purchase Contracts.

"III. *Redelivery of Gas to Pipe Line*—Gatherer agrees to redeliver to Pipe Line, at a point of delivery located at or near the outlet side of Gatherer's Orange County Plant a quantity of gas equal to the quantity of gas gathered by Gatherer hereunder for the account of Pipe Line from the fields covered by the Gas Purchase Contracts, after making an appropriate deduction for the condensate content of that portion of the gas received by Gatherer in a full stream, said condensate content to be determined in accordance with tests made pursuant to the terms and provisions of the Gas Purchase Contracts under which full stream gas is delivered and received. It is recognized that the gas gathered hereunder by Gatherer will be co-mingled with gas from other fields connected to Gatherer's gathering system prior to redelivery to Pipe Line and due to operating conditions Gatherer may not be able to deliver to Pipe Line on any day a quantity of gas exactly equal to the quantity of gas received by Gatherer for the account of Pipe Line on such day. However, Gatherer agrees to use his best efforts to deliver to Pipe Line on each day the same quantity of gas received by Gatherer for the account of Pipe Line on such day and Gatherer shall, following any period of unequal delivery, adjust its deliveries to Pipe Line by a volume equal to the excess or deficiency which occurred during said period of unequal delivery as soon as practicable after the same shall have been ascertained.

* * * * * *

"V. *Measurement and Measuring Stations*—

'(1) Gatherer agrees to install, maintain, & operate a measuring station at each point of delivery specified in the Gas Purchase Contracts. Each of such measuring stations shall be installed and operated and measurements shall be made in accordance with the provisions of the Gas Purchase Contract covering the point of delivery at which such measuring station is located. Gatherer agrees to inform Pipe Line each month of the quantities of gas

taken by Gatherer at each point of delivery during the preceding month in sufficient time for Pipe Line to make payments under the Gas Purchase Contracts in accordance with the terms thereof.'

'(2) Pipe Line agrees to install, maintain, and operate a measuring station with standard orifice meters and the necessary appurtenances at a mutually agreeable location downstream of and near the point of delivery of gas hereunder to Pipe Line. Said gas shall be measured at said point of delivery in accordance with the following terms and provisions:'

* * * * * *

ITEM B

EXHIBIT 11-A

This exhibit is captioned "Agreement Dated June 28, 1954 to Gathering Agreement Between Texas Gas Pipe Line Corporation and Texas Gas Corporation, Dated April 7, 1954." The purpose of this amendment was to include a description of additional Gas Purchase Contract and to recite an agreement as to payment. The contracts are as follows:

1. Letter Agreement 4/30/54 between Texas Gas Pipe Line Corporation and Shell Oil Company covering leases in the Nome Field, Jefferson County, Texas.

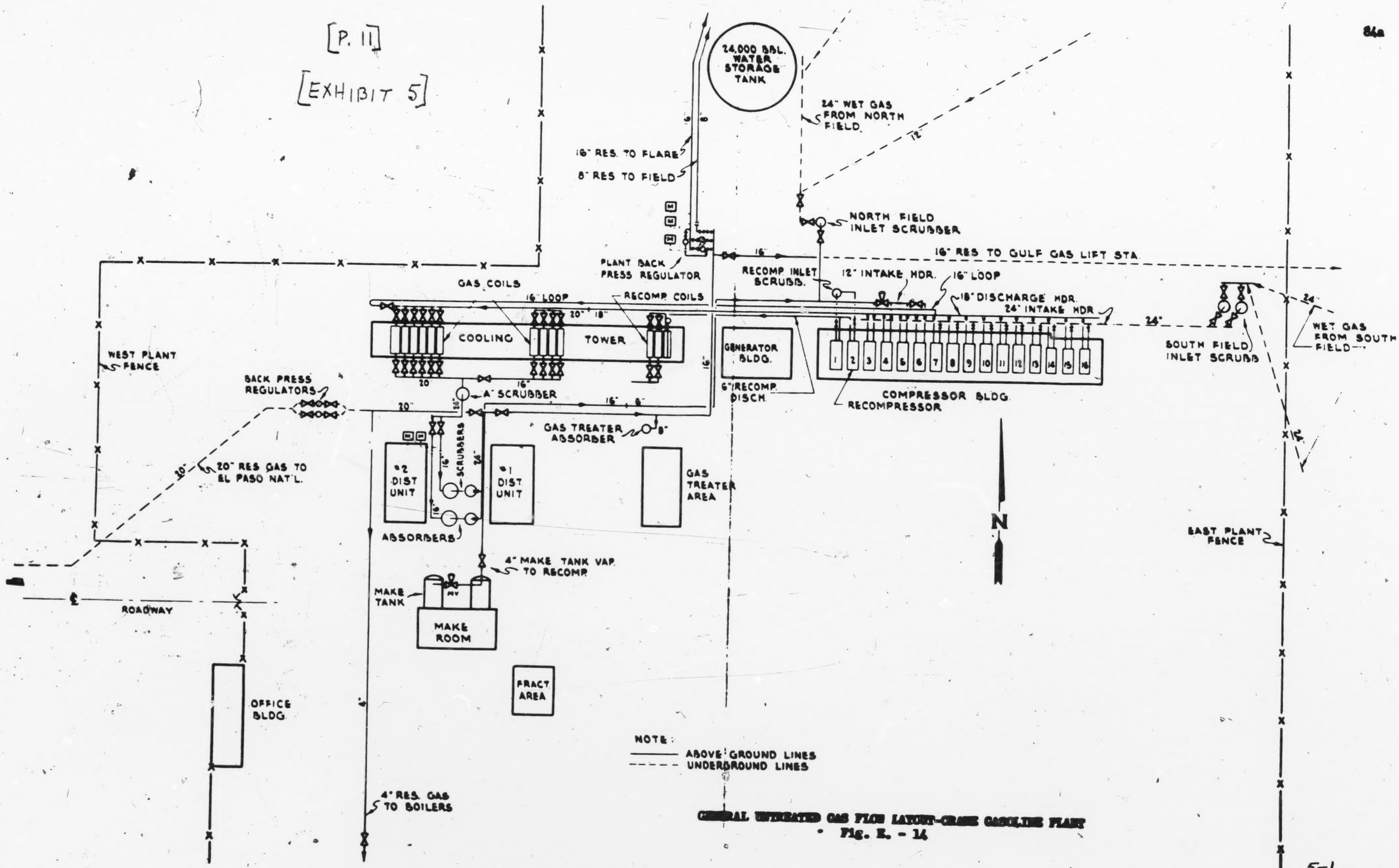
* * * * * *

The second paragraph of the amendment recites that "Under the Gathering contract, Gatherer must construct and operate the pipelines referred to in Paragraph 15 of the Letter Agreement 4/30/54 between Pipe Line and Shell Oil Company described above, and Pipe Line agrees to pay to Gatherer all sums of money Pipe Line realizes from the amortization of said pipelines pursuant to said paragraph numbered 15 of said Letter Agreement 4/30/54.

* * * * * *

[P. 11]

[EXHIBIT 5]

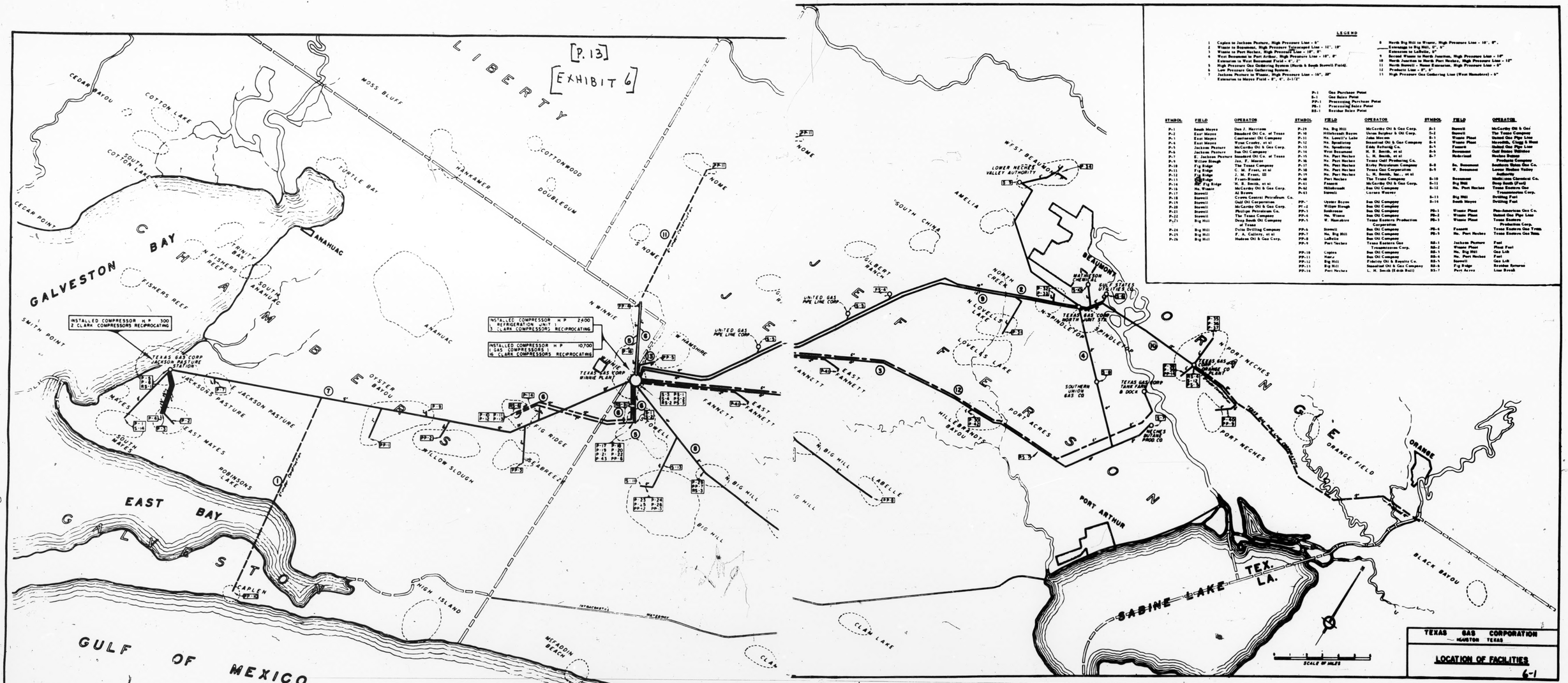


GENERAL INTEGRATED GAS FLOW LAYOUT-CRUDE GASOLINE PLANT
Fig. E. - 14

5-1

[P. 13]

[EXHIBIT 6]



LEGEND

1. Caplen to Jackson Pasture, High Pressure Line - 6".
2. Winnie to Beaumont, High Pressure Talcocpod Line - 16", 18"
3. Winnie to Port Neches, High Pressure Line - 18", 8".
4. West Beaumont to Port Arthur, High Pressure Line - 16", 8"
5. Extension to West Beaumont Field - 4", 2".
6. High Pressure Gas Gathering System (North & South Stowell Field).
7. Low Pressure Gas Gathering System.
8. Jackson Pasture to Winnie, High Pressure Line - 16", 20" Extension to Mayes Field - 8", 6", 4-1/2"
9. North Big Hill to Winnie, High Pressure Line - 10", 8", Extension to Big Hill, 8", 6"
10. Extension to LaBelle, 6"
11. Second Winnie to North Junction, High Pressure Line - 12"
12. North Junction to North Port Neches, High Pressure Line - 12"
13. North Stowell - Nome Extension, High Pressure Line - 8"
14. High Pressure Line - 8", 6"
15. High Pressure Gas Gathering Line (West Hamshire) - 6"

P-1 Gas Purchase Point
S-1 Gas Sales Point
PP-1 Processing Purchase Point
PS-1 Processing Sales Point
SS-1 Residue Sales Point

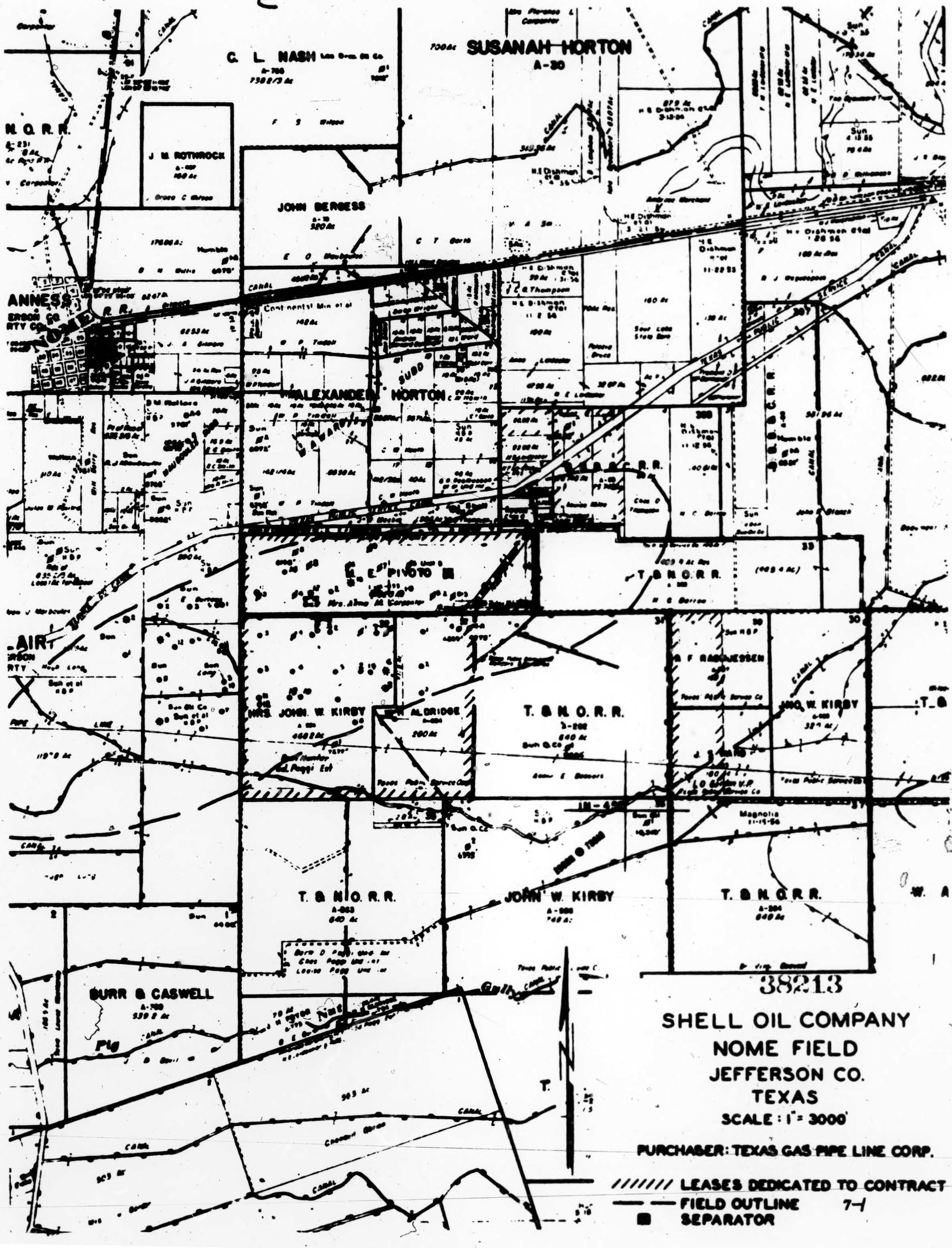
SYMBOL	FIELD	OPERATOR
P-1	South Mayes	Don J. Harrison
P-2	East Mayes	Standard Oil Co. of Texas
P-3	East Mayes	Continental Oil Company
P-4	East Mayes	Wynn Crosby, et al
P-5	Jackson Pasture	McCarthy Oil & Gas Corp.
P-6	Jackson Pasture	Sun Oil Company
P-7	E. Jackson Pasture	Standard Oil Co. of Texas
P-8	William Blough	Jos. F. Moore
P-9	Fig Ridge	The Texas Company
P-10	Fig Ridge	C. M. Frost, et al
P-11	Fig Ridge	J. M. Frost, III
P-12	Fig Ridge	Frost-Stanley
P-13	NW Fig Ridge	H. R. Smith, et al
P-14	No. Winnie	McCarthy Oil & Gas Corp.
P-16	Stowell	Al Brown
P-17	Stowell	Cravens Central Petroleum Co.
P-18	Stowell	Gulf Oil Corporation
P-19	Stowell	McCarthy Oil & Gas Corp.
P-20	Stowell	Phillips Petroleum Co.
P-21	Stowell	The Texas Company
P-22	Stowell	Deep South Oil Company of Texas
P-23	Big Hill	Irvin Drilling Company
P-24	Big Hill	F. A. Callery, et al
P-25	Big Hill	Hudson Oil & Gas Corp.
P-26	Big Hill	Port Neches
P-27	No. Big Hill	Hillebrandt Bayou
P-28	No. Big Hill	Union Sulphur & Oil Corp.
P-29	No. Big Hill	Lowell's Lake
P-30	No. Big Hill	Sinclair Oil & Gas Company
P-31	No. Spindletop	Eddy Refining Co.
P-32	No. Spindletop	H. R. Smith, et al
P-33	No. Port Neches	H. R. Smith, et al
P-34	No. Port Neches	Texas Gulf Producing Co.
P-35	No. Port Neches	Sidey Petroleum Company
P-36	No. Port Neches	Texas Gas Corporation
P-37	No. Port Neches	L. H. Smith, Inc., et al
P-38	Port Neches	The Texas Company
P-41	Fannett	McCarthy Oil & Gas Corp.
P-42	Hillebrandt	Sun Oil Company
P-43	Stowell	Lorenz Weaver
PP-	Oyster Bayou	Sun Oil Company
PP-2	Willow Slough	Sun Oil Company
PP-3	Bearbreed	Sun Oil Company
PP-4	No. Winnie	Sun Oil Company
PP-5	W. Hamshire	Sun Oil Company
PP-6	Stowell	Sun Oil Company
PP-7	No. Big Hill	Sun Oil Company
PP-8	LaBelle	Sun Oil Company
PP-9	Port Neches	Texas Eastern Gas
PP-10	Caplen	Sun Oil Company
PP-11	Mayes	Sun Oil Company
PP-12	Big Hill	Fidelity Oil & Royalty Co.
PP-13	Big Hill	Sinclair Oil & Gas Company
PP-14	Port Neches	L. H. Smith (E 6th Hall)
P-15	No. Big Hill	McCarthy Oil & Gas Corp.
P-16	Hillebrandt Bayou	Union Sulphur & Oil Corp.
P-17	No. Lowell's Lake	John Morton
P-18	No. Spindletop	Sinclair Oil & Gas Company
P-19	No. Spindletop	Eddy Refining Co.
P-20	No. Port Neches	H. R. Smith, et al
P-21	No. Port Neches	H. R. Smith, et al
P-22	No. Port Neches	Texas Gulf Producing Co.
P-23	No. Port Neches	Sidey Petroleum Company
P-24	No. Port Neches	Texas Gas Corporation
P-25	No. Port Neches	L. H. Smith, Inc., et al
P-26	Port Neches	The Texas Company
P-27	No. Big Hill	McCarthy Oil & Gas Corp.
P-28	Hillebrandt Bayou	Union Sulphur & Oil Corp.
P-29	No. Lowell's Lake	John Morton
P-30	No. Spindletop	Sinclair Oil & Gas Company
P-31	No. Spindletop	Eddy Refining Co.
P-32	No. Port Neches	H. R. Smith, et al
P-33	No. Port Neches	H. R. Smith, et al
P-34	No. Port Neches	Texas Gulf Producing Co.
P-35	No. Port Neches	Sidey Petroleum Company
P-36	No. Port Neches	Texas Gas Corporation
P-37	No. Port Neches	L. H. Smith, Inc., et al
P-38	Port Neches	The Texas Company
P-41	Fannett	McCarthy Oil & Gas Corp.
P-42	Hillebrandt	Sun Oil Company
P-43	Stowell	Lorenz Weaver
PP-	Oyster Bayou	Sun Oil Company
PP-2	Willow Slough	Sun Oil Company
PP-3	Bearbreed	Sun Oil Company
PP-4	No. Winnie	Sun Oil Company
PP-5	W. Hamshire	Texas Eastern Production Corporation
PP-6	Fannett	Sun Oil Company
PP-7	No. Big Hill	Sun Oil Company
PP-8	LaBelle	Sun Oil Company
PP-9	Port Neches	Texas Eastern Gas
PP-10	Caplen	Sun Oil Company
PP-11	Mayes	Sun Oil Company
PP-12	Big Hill	Fidelity Oil & Royalty Co.
PP-13	Big Hill	Sinclair Oil & Gas Company
PP-14	Port Neches	L. H. Smith (E 6th Hall)
S-1	Stowell	McCarthy Oil & Gas
S-2	Stowell	The Texas Company
S-3	Winnie Plant	Union Sulphur & Oil Corp.
S-4	Winnie Plant	Meredith, Clegg & Hunt
S-5	Winnie Plant	United Gas Pipe Line
S-6	Beaumont	Gulf States Utilities
S-7	Beaumont	Houston Pipeline
S-8	Sn. Beaumont	Southern Union Gas Co.
S-9	W. Beaumont	Lower Neches Valley Authority
S-10	Beaumont	Mobil-Jones Chemical Co.
S-11	Big Hill	Deep South (Frost)
S-12	No. Port Neches	Texas Eastern Gas Transmission Corp.
S-13	Big Hill	Drilling Fool
S-14	South Mayes	Drilling Fool
PS-1	Winnie Plant	Pan-American Gas Co.
PS-2	Winnie Plant	United Gas Pipe Line
PS-3	Winnie Plant	Texas Eastern Production Corp.
PS-4	Fannett	Texas Eastern Gas Trans
PS-5	No. Port Neches	Texas Eastern Gas Trans.
SS-1	Jackson Pasture	Fuel
SS-2	Winnie Plant	Plant Fuel
SS-3	No. Big Hill	Gas Lift
SS-4	No. Port Neches	Fuel
SS-5	Stowell	Gas Lift
SS-6	Fig Ridge	Brandon Returns
SS-7	Port Acres	Line Break

TEXAS GAS CORPORATION
HOUSTON TEXAS

LOCATION OF FACILITIES

6-1

[EXHIBIT 7. p 15]



[EXHIBIT 8 P. 17]

Shell

Shell - Sun

14

10

11

12

2

13

MR

MR

MR

Mrs Alma M. Carpenter

1

Shell - Sun Unit "B"

Shell

MR MR

9

6

7

Compressor Unit

Ed Peggi Est.

Sun

MR

POINT OF TIE-IN TO TEXAS GAS PIPE LINE NOME FIELD LATERAL

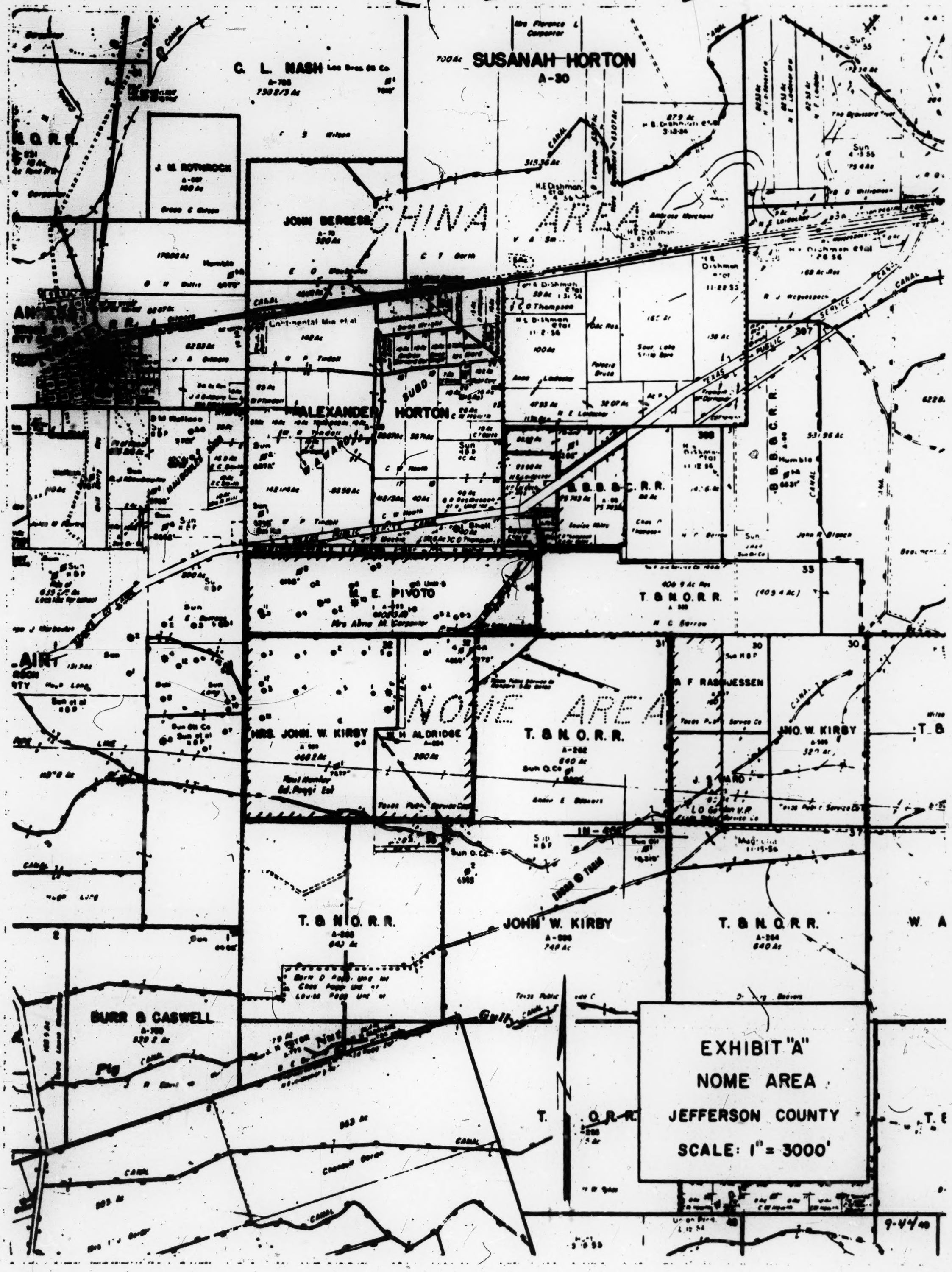
Texas Public Service Co.

NOME FIELD
JEFFERSON COUNTY TEXAS
SCALE 1" = 500

- Lease Facilities
- Gas Gathering Facilities to be owned and Operated by Texas Gas Pipe Line Corp.
- Separator (Low or High Pressure)
- Meter

8-1

[P. 19] [EXHIBIT A]



P. 23 EXHIBIT 11

212

205

196

211

206

195

SEE MAP NO. 3

Gulf
"McElroy"

J.T. McElroy

J.E. Mabee

Shell
"A"

Shell
"B"

Sep. G

Gulf

J.T. McElroy

Gulf

C. C. S. D. & R. G. N. G. R. R. C O.

COUNTY

COUNTY

VACUUM & RESIDUE LINES
CRANE DISTRICT
PHILLIPS PETROLEUM CO.
BARTLESVILLE OKLA.

Scale: 1"=400
W. E. Wilkerson

5 2:51 W.M. Foreign Wells
9 2:50 HAC

NC

11

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SEP 11 1957
JOHN T. FEY, Clerk

No. 449

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT.

No. 15900

SHELL OIL COMPANY,

Petitioner,

vs.

FEDERAL POWER COMMISSION,

Respondent.

PETITION TO REVIEW AND SET ASIDE ORDER OF THE FEDERAL POWER COMMISSION.

DAVID T. SEARLS,
VINSON, ELKINS, WEEMS & SEARLS,
Esperson Building,
Houston, Texas,

R. H. WHILDEN,
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U. S. COURT OF APPEALS
FILED
DEC 28 1955
JOHN A. FEEHAN, Jr.
CLERK

Pandick Press, Inc., 22 Thames St., New York 6, N. Y., U. S. A.

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Shell Oil Company, Docket No. G-4671	1, 2

Statutes.

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Section 3	3

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT.

No. .....

SHELL OIL COMPANY,

Petitioner,

vs.

FEDERAL POWER COMMISSION,

Respondent.

PETITION TO REVIEW AND SET ASIDE ORDER OF THE FEDERAL POWER COMMISSION.

TO THE HONORABLE THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT:

SHELL OIL COMPANY, herein referred to as "Shell", petitions this Honorable Court to review and set aside a final order of the Federal Power Commission, herein called "the Commission", entered in its Opinion No. 284, issued September 9, 1955 in a consolidated proceeding entitled *In the Matters of Deep South Oil Company of Texas, Docket No. G-2952, Humble Oil & Refining Company, Docket No. G-5261, and Shell Oil Company, Docket No. G-4671,* insofar as said order denies the petition of Shell.

1.

Nature of the Proceeding.

On November 5, 1954, Shell filed with the Commission a petition for declaratory order seeking a status determination under the Natural Gas Act (52 Stat. 831; 15 U. S. C. §717r *et seq.*, herein called the Act) as to Shell's sale of

casinghead gas at the outlet of the field separator in the McElroy Field, Crane and Upton Counties, Texas, to Phillips Petroleum Company (herein called "Phillips"). The Commission assigned Docket No. G-4671 to this petition.

Deep South Oil Company of Texas (herein called "Deep South") had previously filed with the Commission a similar petition seeking a declaratory order that certain of its sales in the North Big Hill Field, Jefferson County, Texas, were not subject to the provisions of the Act. This petition was assigned Docket No. G-2952 by the Commission.

On November 18, 1954 Shell filed with the Commission a petition to intervene in the Deep South (Docket No. G-2952) proceeding and for a status determination as to a contract of sale under which Shell sells casinghead gas and gas-well gas produced in the Nome Field, Jefferson County, Texas to Texas Gas Pipe Line Corporation. By order adopted December 8, 1954 the Commission granted this intervention.

On November 18, 1954 the Commission consolidated for hearing the Shell proceeding in Docket No. G-4671 with the Deep South proceeding in Docket No. G-2952 and with a similar proceeding which had been instituted by Humble Oil & Refining Company at Docket No. G-5261.

A hearing in this consolidated proceeding was held before a Presiding Examiner of the Commission on November 29 and 30, December 1 and 2, 1954 and January 10, 1955. On April 5, 1955 the Presiding Examiner issued his decision in which he concluded that the sales of each of said companies involved in the consolidated proceeding were sales in interstate commerce of natural gas for resale within the purview of the Act, and that each of said companies was a natural-gas company within the meaning of the Act. Each of said companies timely filed exceptions to this decision and the matter was orally argued before the Commission. On September 9, 1955 the Commission issued its Opinion 284, and accompanying order, in which it affirmed the decision of the Presiding Examiner. On Octo-

ber 7, 1955 Shell and Deep South each filed an application for rehearing. On October 4, 1955 Humble filed a similar application.

On November 4, 1955 the Commission issued an order denying each of the applications for rehearing.

The questions involved, as to Shell, are (1) whether Shell's sale and delivery of casinghead gas at the lease separator in the McElroy Field, and (2) whether Shell's sale and delivery of casinghead gas and gas-well gas at the separator and the well head, respectively, in the Nome Field, constitute sales in interstate commerce of natural gas for resale for ultimate public consumption so as to make Shell a natural-gas company within the meaning of the Act.

2.

Jurisdiction of This Court.

a. This Court has jurisdiction of the subject-matter of this petition by virtue of Section 19b of the Act (52 Stat. 831; 15 U. S. C. 717r(b)).

b. The Commission is an agency of the United States Government created by Section 1 of the Federal Power Act (41 Stat. 1063; 16 U. S. C. 792, as amended; Reorganization Plan No. 9, Section 3, effective May 24, 1950, 15 Fed. Reg. 3175).

c. Shell is a corporation incorporated under the laws of the State of Delaware and does an extensive oil and gas business in Texas, Louisiana and Mississippi. It has two principal offices in Texas, one located in Houston and one located in Midland. Its principal office in Louisiana is located in New Orleans. Shell is now, and for many years has been, engaged in exploring for, producing, manufacturing and marketing oil and natural gas in the States of Texas, Louisiana and Mississippi. More than 75% of the natural gas which Shell produces and sells is produced and sold in the States of Texas, Louisiana and Mississippi. Shell also does business in all 48 States of

the United States, but by far the greater portion of its natural gas business is transacted from its offices in Houston and Midland, Texas and New Orleans, Louisiana. It employs several thousand employees in the States of Texas, Louisiana and Mississippi and the records of its production and sales of natural gas in Texas, Louisiana and Mississippi are kept and maintained in its Houston, Midland and New Orleans offices. Most of Shell's business relating to the exploration for and production and sale of natural gas originates in and is transacted from its offices in Houston, Midland and New Orleans.

d. Shortly after the Commission issued its order of November 4, 1955 denying the applications for rehearing, Deep South filed with this Honorable Court its petition to review and set aside Opinion 284 of the Commission. As required by Section 19b of the Act, the Commission, upon being served with a copy of Deep South's petition, filed with this Honorable Court the transcript of the record in the consolidated proceeding in which Opinion 284 was issued. Thereupon, this Court obtained exclusive jurisdiction to affirm, modify, or set aside Opinion 284 in whole or in part, under Section 19(b) of the Act.

e. Shell was a party to the proceeding in which Opinion 284 was issued and Shell is aggrieved thereby. Each of the points hereinafter set forth upon which Shell relies herein, was urged in the application for rehearing which Shell filed with the Commission.

3.

The Evidence.

As to the McElroy Field.

The evidence adduced at the hearing before the Presiding Examiner establishes:

a. In 1938 Shell acquired certain oil and gas leases in the McElroy Field. At the time of this acquisition, the previous owners of these leases had sold the casinghead

gas to Phillips under a casinghead gas contract dated May 7, 1936. Shell, therefore, acquired its leases subject to and became a seller under the casinghead gas contract. Since its acquisition Shell has operated the leases and delivered the casinghead gas to Phillips.

b. At the time of the execution of the casinghead gas contract, and at the date when Shell acquired the leases and became bound by the contract, Phillips, the purchaser, gatherer and processor of the casinghead gas, was not selling any residue gas from its Crane Gasoline Plant, which plant is located in the McElroy Field about five miles from Shell's leases. It was not until July 1950 that any part of the residue was sold by Phillips to El Paso Natural Gas Company (herein called "El Paso"), although the Crane Gasoline Plant began operations in 1929.

c. There are 19 pumping oil wells on Shell's leases. The casinghead gas which Shell sells to Phillips is produced from these wells along with the oil. In the reservoir, casinghead gas is in solution or associated with crude oil and is produced from the oil wells dissolved in the oil.

d. Casinghead gas normally consists of fixed gases, particularly methane and ethane, together with liquefiable hydrocarbons, water vapor and sometimes hydrogen sulphide and carbon dioxide.

e. The well effluent from Shell's 19 oil wells flows at well pressure through small production flow lines to a single separator which is located on the lease. The separator is a small tank where low pressure is maintained, and where there is a separation of the crude oil and free water from the casinghead gas. The crude oil passes out the bottom of the separator into lease storage tanks, and the casinghead gas passes out the top of the separator into a small vent line which connects with the terminus of a 4-inch lateral line of Phillips a few feet from the separator on Shell's lease. At this point Phillips takes delivery, title and exclusive control of the casinghead gas.

f. At the point of delivery the casinghead gas contains methane, ethane, high quantities of liquefiable hydrocarbons

(natural gasoline, butane and propane), water vapor, and an exceptionally large amount of hydrogen sulphide. At the time and place of delivery from Shell to Phillips, the casinghead gas is not suitable for public consumption nor is it then fit for transportation in high pressure gas lines which are used for transporting gas in interstate commerce.

g. After the casinghead gas enters the 4-inch lateral line of Phillips on the lease, it flows at well or separator pressure a distance of 1,531 feet where it enters one of four main gathering lines which Phillips owns and operates in the field for the purpose of gathering casinghead gas from 897 wells in the field to its gasoline plant. At the point where the casinghead gas purchased from Shell enters one of the main gathering lines, the line is ten inches in diameter but it progressively increases in size between that point and the plant (a distance of five or six miles) to 24 inches. Upon entering this main gathering line, the casinghead gas is commingled with casinghead gas from a great number of other wells in the field, and as part of this commingled mass, it moves at slightly decreasing pressure to the inlet of the gasoline plant.

h. The Crane Gasoline Plant of Phillips is served by four 24-inch main field gathering lines which bring into the plant between 33,000,000 and 34,000,000 cubic feet of casinghead gas per day from 897 wells in the field. Of this amount, only approximately one-half million cubic feet a day come from the 19 Shell wells.

i. When the commingled mass of casinghead gas reaches the plant, it is first scrubbed to remove water and small amounts of crude oil. After being compressed to approximately 50 pounds pressure it enters absorbers wherein an absorption process takes place by a mixture of the casinghead gas with an absorption oil. This results in the liquefiable hydrocarbons being absorbed from the casinghead gas and leaves a sour residue gas.

j. Part of the residue gas is sold by Phillips to El Paso with delivery being made near the outlet side of

Phillips' plant, part thereof is used by Phillips as fuel in the plant, and part is returned to the leases. El Paso then treats the sour residue gas which it purchases to remove hydrogen sulphide from it. After dehydration, this residue enters one of El Paso's lines for transportation in other states.

k. After Shell delivers the casinghead gas to Phillips at the separator, Shell has no further control over it, nor any title to it.

l. The greater part of the money which Shell receives for the casinghead gas is for liquids extracted from the gas.

m. The contract under which Phillips sells the sour residue gas to El Paso was negotiated solely between those parties. Shell is not a party to that contract in any capacity and it had nothing to do with its negotiation.

As to Nome Field.

a. Shell has 8 oil wells in the Nome Field from which casinghead gas is produced, and one gas well. All of this gas has been sold by Shell to Texas Gas Pipe Line Corporation under a contract which obligates the purchaser to construct a segment of gathering line from the points at which the gas will be delivered, to a junction with an existing gathering line which goes to the Winnie processing plant. The casinghead gas is delivered at field separators and the gas-well gas is delivered at the well head. After taking title and delivery at those points, the purchaser gathers the gas, or causes it to be gathered, commingled with other gas, into the Winnie plant where it is processed. Some of the residue gas from the Winnie plant (which yet must be dehydrated) is delivered to Transcontinental Pipe Line Company. The processing which this gas undergoes in the Winnie plant is similar to the processing which the gas from the McElroy Field undergoes in the Crane Gasoline Plant.

4.

Errors of the Commission.

The Commission concluded that the foregoing sales were sales in interstate commerce of natural gas for resale. Shell relies herein upon the following points, each of which was urged in its application for rehearing filed with the Commission:

a. The Commission erred as a matter of law in concluding that Shell's sale of casinghead gas to Phillips in the McElroy Field is a sale in interstate commerce of natural gas for resale, where the casinghead gas is sold and delivered at the lease separator in the field where the gas is produced, and must be gathered to a processing plant in the field, where it must be processed for manufacture into liquid products and residue gas and treated for removal of hydrogen sulphide before the by-product, residue gas, is sold and delivered to an interstate pipe line company.

b. The Commission erred as a matter of law in concluding that Shell's sale of casinghead gas and gas-well gas to Texas Gas Pipe Line Corporation in the Nome Field is a sale in interstate commerce of natural gas for resale, where the casinghead gas is sold and delivered at lease separators and the gas-well gas is sold and delivered at the wellhead, and where the purchaser gathers this gas to a processing plant in or near the field where the gas is processed and dehydrated before the residue is sold and delivered to an interstate pipe line company.

c. The Commission erred in concluding that the casinghead gas sold by Shell is the same product as the residue gas which the plant operator later sells to an interstate pipe line company. This conclusion is contrary to law, is without evidentiary support, and is contrary to substantial evidence in the record.

d. The Commission erred in concluding that Shell's sales are not for manufacture but for resale. This conclu-

sion is contrary to law, is without evidentiary support, and is contrary to substantial evidence in the record.

e. The Commission erred in concluding that the casinghead gas which Shell sells is "natural gas" within the meaning of the Act. This conclusion is contrary to law, is without evidentiary support, and is contrary to substantial evidence in the record.

f. The Commission erred in concluding that Shell's sales are not covered by the production and gathering exemption of Section 1b of the Act (52 Stat. 821, 15 U. S. C. 717). This conclusion is contrary to law, is without evidentiary support, and is contrary to substantial evidence in the record.

g. The Commission erred in concluding that the gas which Shell sells flows continuously and without interruption from the well into the interstate pipe line. This conclusion is without evidentiary support and is contrary to substantial and uncontradicted evidence.

h. The Commission erred in failing to apply a firmly established rule of law that an interstate journey does not begin until after manufacturing and processing have been completed.

i. The Commission erred, as a matter of law, in failing to distinguish between an "affecting" commerce statute and an "in" commerce statute. The Natural Gas Act is one of the latter, and the Commission erred in construing it as one of the former.

j. The Commission erred in failing to find that Shell's sales involved in this proceeding are not sales in interstate commerce of natural gas for resale within the meaning of the Act, but constitute local, intrastate transactions not covered by the Act.

WHEREFORE, Shell prays that a copy of this petition be served upon Respondent as required by law and that this Honorable Court review and set aside in its entirety Opinion No. 284 and the accompanying order issued by the

Commission on November 4, 1955. Shell further prays that this Court determine and declare that its sales in the McElroy and Nome Fields do not constitute sales of natural gas in interstate commerce for resale and that Shell is not a natural-gas company by virtue of said sales.

Respectfully submitted,

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VINSON, ELKINS, WEEMS & SEARLS,
Esperson Building,
Houston, Texas.

R. H. WHILDEN,
Shell Building,
Houston, Texas.

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Petroleum Building,
Midland, Texas.

OLIVER L. STONE,
50 West 50th Street,
New York 20, N. Y.

Attorneys for Shell Oil Company.

By OLIVER L. STONE.

Dated, New York, N. Y., December 27, 1955.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

OLIVER L. STONE, being first duly sworn, deposes and says he is one of the attorneys for the Petitioner; that he is conversant with the matters set forth in the petition for review; that he has read the above and foregoing petition for review and that the statements of fact contained in such petition for review are true and correct.

OLIVER L. STONE

Subscribed and sworn to before me
this 27th day of December, 1955.

.....

Notary Public in and for New York, N. Y.

Office - Supreme Court, U.S.
FILED
SEP 11 1957
JOHN T. PEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 449

SHELL OIL COMPANY,

Petitioner,

v.

FEDERAL POWER COMMISSION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

*WILLIAM F. KENNEY,
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* Attorneys upon whom service is to be made.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. .....

SHELL OIL COMPANY,

Petitioner,

v.

FEDERAL POWER COMMISSION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Shell Oil Company, Petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled cause on June 29, 1957.

Opinions Below

The majority and dissenting opinions in the Court of Appeals have not been reported. The opinions appear in the appendix to this petition. There is also appended hereto a copy of the opinion of the Court of Appeals in *Deep South Oil Company of Texas* v. *Federal Power Commission.* The decision of the Presiding Examiner, opinion and order of the majority of the Federal Power Commission, and dissenting opinion of Commissioner Digby are contained in the record (R. 130, 340, 357).

Jurisdiction

The judgment of the Court of Appeals is dated and was entered on June 29, 1957.

Jurisdiction of this Court is invoked under 28 U. S. C. 1254(1) and Sec. 19(b) of the Natural Gas Act, 15 U. S. C. 717 r (b).

Questions Presented

1. Does the sale of casinghead gas by the producer to a gatherer and processing plant operator, who is not an interstate gas pipe line company, with delivery and passage of title at the lease separator prior to gathering and processing, constitute "the sale in interstate commerce of natural gas for resale for ultimate public consumption" so as to bring such sale within the Natural Gas Act and the jurisdiction of the Federal Power Commission?

2. Does the sale of casinghead gas and gas-well gas with delivery and passage of title at the lease separator and wellhead, respectively, by the producer to an interstate pipe line company prior to gathering and processing constitute "the sale in interstate commerce of natural gas for resale for ultimate public consumption" so as to bring such sale within the Natural Gas Act and the jurisdiction of the Federal Power Commission?

3. If the foregoing sales are "in interstate commerce of natural gas for resale", are they within the production and gathering exemption of Section 1(b) of the Natural Gas Act?

Statute Involved

The statute involved is the Natural Gas Act of 1938, as amended (52 Stat. 831; 15 U. S. C. 717-717 w, herein called the Act), and particularly Section 1(b) thereof, which provides (15 U. S. C. 717):

> "The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

Statement of the Case

This case was instituted by Shell before the Federal Power Commission pursuant to Section 1.7(c) of the Rules of Practice and Procedure of the Commission for a declaratory order seeking a status determination under the Act of Shell's sale of casinghead gas to Phillips Petroleum Company with delivery and passage of title at the lease separator in the McElroy Field, Crane and Upton Counties, Texas.[1]

---

[1] Deep South Oil Company of Texas had previously filed a similar petition as to its sales in the North Big Hill Field, Jefferson County, Texas. Shell intervened in that proceeding before the Commission and sought a status determination as to its sale to Texas Gas Pipe Line Corporation of casinghead gas and gas-well gas in the Nome Field, Jefferson County, Texas, which field is in the vicinity of and is served by the same processing plant as the North Big Hill Field. The Shell and Deep South cases, together with a similar proceeding which had been instituted by Humble Oil & Refining Company, were consolidated for hearing before the Commission. These three proceedings were submitted to the Court of Appeals on a joint record and, together with a related case of Continental Oil Company, were argued at the same time before the Court of Appeals.

Phillips does not transport any of this gas outside of Texas. It gathers the casinghead gas to its processing plant located in the field about five miles from Shell's leases where the casinghead gas is processed[2] by Phillips for the manufacture of liquid products and residue gas. Some of this residue gas is sold by Phillips to El Paso Natural Gas Company, an interstate pipe line company which transports the residue out of Texas after El Paso dehydrates and treats the residue for the removal of hydrogen sulphide (App. below, Vol. One, pp. 26-28).[3]

Shell acquired its oil and gas leases in the McElroy Field in 1938, at which time the casinghead gas was subject to a casinghead gas contract which had been entered into on May 7, 1936 between Phillips and Shell's predecessor in title.

At the date of the casinghead gas contract, Phillips was not selling any of the residue gas from its Crane Gasoline Plant. This plant began operating in 1929 and the residue gas manufactured therein was flared into the air until July 1950 when Phillips entered into the contract with El Paso Natural Gas Company providing for the sale of a portion of the residue gas with delivery near the outlet of the plant (App. below, Vol. One, pp. 29, 81).

There are 19 oil wells on Shell's leases in the McElroy Field. The casinghead gas which Shell sells to Phillips is produced, along with the oil, from these wells. In the

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[2] This processing, which is a term of art in the gas industry, is an intricate undertaking, not to be confused with mere compression and cleaning of the casinghead gas. It actually changes the character, utility and value of the casinghead gas (pp. 5-6, *infra*).

[3] From the record in the Court of Appeals, there is filed in this Court copies of the Appendix to the brief filed by Shell in the Court of Appeals. This Appendix is in two volumes; Volume One being testimony of certain witnesses and Volume Two consisting of certain exhibits which were introduced at the hearing. Reference herein to said Appendix will be to "App. below", followed by the volume number and the page or exhibit number.

reservoir, casinghead gas is in solution or associated with crude oil and is produced in solution with the oil (App. below, Vol. One, pp. 6, 40, 70).

The well effluent from Shell's wells flows at well pressure through small production flow lines to a separator which is located on one of Shell's leases a short distance from the wells. In the separator the crude oil and free water are separated from the casinghead gas, with the casinghead gas passing out of the top of the separator into a small vent line which connects with the terminus of a 4-inch lateral line of Phillips a few feet from the separator. At this point, which is still on Shell's lease, Phillips takes delivery, title and exclusive control of the casinghead gas (App. below, Vol. One, pp. 6-10, 18, 23-24, 81 and Vol. Two, Exhibit 1).

At the point of delivery the casinghead gas contains methane, ethane, high quantities of liquefiable hydrocarbons (natural gasoline, butane and propane), water vapor and a large amount of hydrogen sulphide. In this condition the casinghead gas is not suitable for public consumption as fuel nor is it fit for transportation in high pressure lines which are used for transporting gas in interstate commerce (App. below, Vol. One, pp. 8-9, 26-29, 76-79, 82, 87 and Vol. Two, Exhibit 3).

After the casinghead gas enters the 4-inch lateral line of Phillips, it flows at well or separator pressure a distance of 1,531 feet where it enters one of four main gathering lines which Phillips owns and operates in the field for the purpose of gathering casinghead gas to its gasoline plant. At the point where the casinghead gas purchased from Shell enters one of the main gathering lines, the line is 10 inches in diameter but it progressively increases in size between that point and the plant to 24 inches. Upon entering this main gathering line, the casinghead gas is com-

mingled with other casinghead gas from a great number of wells in the field owned by other producers, and moves at slightly decreasing pressure to the inlet of the gasoline plant (App. below, Vol. One, pp. 10, 14, 16, 23, 25, 29 and Vol. Two, Exhibits 1 and 11).

The Crane Gasoline Plant of Phillips is served by four 24-inch main field gathering lines which bring into the plant between 33,000,000 and 34,000,000 cubic feet of casinghead gas per day from 897 wells in the McElroy Field. Of this amount, only approximately 500,000 cubic feet a day come from the 19 Shell wells (App. below, Vol. One, pp. 23, 24, 29).

When the casinghead gas reaches the plant, it is first scrubbed to remove water and small amounts of crude oil. After being compressed to approximately 50 pounds pressure it enters absorbers wherein an absorption process takes place resulting in the manufacture of liquids and residue gas (App. below, Vol. One, pp. 24, 27, 74-77 and Vol. Two, Exhibit 5).

Part of the residue gas is sold by Phillips to El Paso with delivery near the outlet side of Phillips' plant, part thereof is used by Phillips as fuel in the plant, and part is returned to the leases for lease operations. El Paso treats the residue gas to remove hydrogen sulphide from it. After dehydration in the State of Texas, this residue enters one of El Paso's lines for transportation into other States (App. below, Vol. One, pp. 26-28).

After Shell delivers the casinghead gas to Phillips at the separator, Shell has no further control over it, nor any title to it. The contract under which Phillips sells the residue gas to El Paso was negotiated solely between those parties. Shell is not a party to that contract in any capacity and had nothing to do with its negotiation (App. below, Vol. One, pp. 10, 12, 24, 29).

The greater part of the money which Shell receives from Phillips for the casinghead gas is for liquids extracted from that gas (App. below, Vol. One, p. 12 and Vol. Two, Exhibit 4).

In the Nome Field, Jefferson County, Texas, Shell has eight oil wells from which casinghead gas is produced, and one gas well. All of this gas has been sold by Shell to Texas Gas Pipe Line Corporation under a contract which obligates the purchaser to construct a segment of gathering line from the points at which the gas will be delivered, to a junction with an existing gathering line which goes to the Winnie Processing Plant located in the Nome Field. The casinghead gas is delivered at field separators and the gas-well gas is delivered at the wellhead (App. below, Vol. One, pp. 40-41, 44 and Vol. Two, Exhibits 6, 8, 9).

After taking title and delivery at the points mentioned above, the purchaser gathers the gas, or causes it to be gathered, commingled with other gas, into the Winnie Plant where it is processed. Some of the residue gas from the Winnie Plant (which still must be dehydrated) is delivered by the plant operator for interstate shipment and some is delivered for local use in Texas (App. below, Vol. One, pp. 46-47 and Vol. Two, Exhibit 6).

The processing which this gas undergoes in the Winnie Plant is similar to the processing which the casinghead gas from the McElroy Field undergoes in Phillips' Crane Gasoline Plant.

The Commission, with Commissioner Digby dissenting as to Shell's sale to Phillips in the McElroy Field, held these sales to be covered by the Act and subject to its jurisdiction thereunder. On review pursuant to Section 19(b) of the Act (15 U. S. C. 717 r (b)), the Court of Appeals, with one judge dissenting, affirmed the Order of the Commission.

Reasons for Granting the Writ

I

The Court of Appeals Has Decided an Important Question of Federal Law Which Has Not Been, But Which Should Be, Settled By This Court.

The far-reaching effect of the decision of the Federal Power Commission and the Court of Appeals in this case is obvious. The result of these holdings is that sales of natural gas made in the course of production and prior to gathering and processing are sales in interstate commerce. This renders unconstitutional the production and gathering taxes on natural gas imposed by the States and jeopardizes the traditional rights exercised by the States in regulating the production and gathering of natural gas. *Michigan-Wisconsin Pipe Line Company* v. *Calvert* (1954), 347 U. S. 157.[4]

We contend that the sales under consideration are not covered by the Act and that this Court's decision in *Phillips Petroleum Company* v. *Wisconsin et al.*, 347 U. S. 672, did not settle the issues involved here. The *Phillips* decision did not judicially amend the Act to change its limited jurisdictional coverage of "sale in interstate commerce" into broader coverage of "sale affecting interstate commerce".

The sole issue in that case was whether the production and gathering exemption of Section 1(b) of the Act removed from Commission jurisdiction sales of gas into the flow of interstate commerce after the completion of gathering and

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[4] The Attorney General of the State of Texas filed an *amicus curiae* brief with the Court of Appeals seeking to have the Order of the Commission reversed on the ground that such order interfered with the traditional powers of the States to regulate the production and gathering of gas, including the power of the States to levy production and gathering taxes thereon.

processing. That is not the issue in this case. The sales involved in the *Phillips* case were consummated after production, gathering and processing were completed and were admitted to be in interstate commerce. 347 U. S. at 677. Thus, the jurisdictional questions involved in this case have not been settled by this Court.[5] But they are of such vital importance to an industry fraught with uncertainty as to the jurisdictional status of pre-gathering and pre-processing sales of gas, that we respectfully submit they should be set at rest by this Court.

This Court has recognized the importance of issues closely related to those in the instant case by having noted probable jurisdiction in the appeal to this Court from the Supreme Court of Kansas in *Cities Service Gas Company* v. *State Corporation Commission of Kansas*, 180 Kan. 454, 304 P. 2d 582; No. 85, Oct. Term, 1956.

The Commission's series of 174 Orders (Fed. Reg., Vol. 19, No. 1, Page 4534, published July 22, 1954; No. 156, Page 5081, published August 12, 1954; and No. 243, Page 8807, published December 23, 1954) does not remove but adds to the uncertainty concerning the Commission's jurisdiction over pre-gathering, pre-processing sales. Those orders apply to "sales in interstate commerce" which are "subject to jurisdiction of the Commission", without in any wise attempting to determine administratively whether sales prior to gathering and processing to a non-interstate pipe line company constitute sales in interstate commerce for

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[5] *J. M. Huber Corp.* v. *F. P. C.* (1956), 3 Cir., 236 F. 2d 550, cert. den. 352 U. S. 971, does not settle this question. There the sale did not involve casinghead gas sold before gathering and processing to a non-interstate pipe line company, but involved the abandonment of facilities used in connection with a sale of gas directly into the line of an interstate pipe line company. Likewise, *Interstate Natural Gas Company* v. *Federal Power Commission*, 331 U. S. 682, and *Natural Gas Pipeline Company of America* v. *Panoma Corporation*, 349 U. S. 44, furnish no guide here, as each involved sales of gas after production and gathering had ended.

resale, and if so, whether such sales are within the production and gathering exemption of Section 1(b) of the Act.

It was in the light of this uncertainty that Shell instituted this proceeding for declaratory order in accordance with the Commission's Rules for the purpose of having this question resolved by this Court. Divided opinions by the Commission and by the Court of Appeals attest to the closeness of the question and emphasize the need of this Court setting this question at rest. This case, to which the Commission is a party, presents an adequate record for resolving this important jurisdictional question under the Act.

The Court of Appeals concluded that the sales here involved are subject to the Act and to the Commission's jurisdiction thereunder because such sales are in interstate commerce. The gas was said to be moving in interstate commerce at the time when and place where Shell's sales were consummated. This conclusion was reached despite the fact that after the casinghead gas is sold by Shell to Phillips it is then gathered to a field processing plant where it undergoes a manufacturing process resulting in liquid products and residue gas, and it is only this residue gas which Phillips thereafter sells and delivers to an interstate pipe line company. The conclusion, we submit, fails to distinguish between "movement of molecules" and "interstate commerce".

It is our contention, and we so urged before the Commission and the Court of Appeals, that this Court's opinion in *Phillips Petroleum Company* v. *Wisconsin, supra,* does not control this case; that the decision in that case, which emphasized that the sales of residue gas were made after gathering and processing had been completed with delivery and passage of title at the outlet of processing plants directly into the stream of interstate commerce, marked

the limit on the producing and gathering end to which the coverage of the Act and the jurisdiction of the Commission could be extended. It is our position that Shell's sales are not covered by the Act because:

1. The Natural Gas Act is an "in" commerce statute, not an "affecting" commerce statute, and applies only to sales completed by delivery after production, gathering and processing have been completed. *Federal Trade Commission* v. *Bunte Bros., Inc.* (1941), 312 U. S. 349.

2. Shell's sales are not "in interstate commerce", and hence not covered by the Act, because:

(i) These sales are completed prior to gathering and processing, and the interstate journey does not begin until after these preliminary functions are completed. *Coe* v. *Errol* (1886), 116 U. S. 517; *Oliver Mining Company* v. *Lord* (1923), 262 U. S. 172; *Utah Power & Light Company* v. *Pfost* (1932), 286 U. S. 165; *Parker* v. *Brown* (1943), 317 U. S. 341; *United States* v. *Yellow Cab Company* (1947), 332 U. S. 218; *Empresa Siderurgica, S. A.* v. *County of Merced* (1949), 337 U. S. 154; *Michigan-Wisconsin Pipe Line Company* v. *Calvert* (1954), 347 U. S. 157.

(ii) There is no continuous and uninterrupted movement of the gas in interstate commerce from the separators and wellheads across state lines—the interstate movement succeeds to gathering and processing, it is not a part of these functions. Cases, *supra*, 2(i).

(iii) Extension of the Act to sales of gas prior to gathering and processing will jeopardize the power of the States to regulate and tax these local activities and to administer effectively their conservation laws, thus defeating the purpose of the Act which was to complement, not to supersede, State power. *Michigan-Wisconsin Pipe Line Company* v. *Calvert*, *supra*; H. R. Rep. No. 709, 75th Cong., 1st Sess. p. 1.

3. Shell's sale to Phillips of casinghead gas in the McElroy Field is not for "resale" but is for manufacturing purposes (App. below, Vol. Two, Exhibit 2, par. 1).

4. The casinghead gas which is sold by Shell to Phillips is not the same product as the residue gas which is later sold by Phillips to El Paso. The casinghead gas itself is not suitable for public consumption or interstate transmission in high-pressure interstate trunk lines at the time of sale. The residue gas which is sold by Phillips to El Paso is a mere by-product of the casinghead gas. *Utah Power & Light Co.* v. *Pfost, supra; Saulsbury Oil Company* v. *Phillips Petroleum Co.* (1944), 10 Cir., 142 F. 2d 27 (cert. den. 323 U. S. 727).

5. The sales involved in this case are within the production and gathering exemption of Section 1(b) of the Act. *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.* (1949), 337 U. S. 498; *Cities Service Gas Co.* v. *Peerless Oil and Gas Co.* (1950), 349 U. S. 179.

II

The Judgment of the Court of Appeals Announces a Principle in Conflict With That Announced by the Supreme Court of Kansas in *Cities Service Gas Company* v. *State Corporation Commission of Kansas*, 180 Kan. 454, 304 P. 2d 582, Which Case is on Appeal in This Court With Probable Jurisdiction Having Been Noted by This Court. No. 85, October Term, 1956.

The substantive issue involved in the *Cities Service Gas Company* appeal is whether the State of Kansas through its Corporation Commission has the power, despite the Natural Gas Act and the jurisdiction of the Federal Power

Commission thereunder, to fix the wellhead price of gas as a condition to its production where the gas is sold in Kansas for transportation and resale outside of Kansas.[6]

Since wellhead sales prior to gathering and processing are involved in that case, an affirmance by this Court of the judgment of the Supreme Court of Kansas will cause the judgment entered in this case by the Court of Appeals to be in conflict with such decision by this Court. For if Kansas, as a condition to the production of gas, can validly establish the price which must be attributed at the wellhead to gas which ultimately leaves that State, so can Texas with respect to the casinghead gas involved in this case. But since the Court of Appeals in this case has held that Shell's sales are subject to the exclusive jurisdiction of the Federal Power Commission, there would result a direct conflict between the federal and state agencies involved.

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[6] In *Phillips Petroleum Company* v. *The Corporation Commission of the State of Oklahoma et al.* (3 cases), Nos. 111-113, October Term, 1956, on the Docket of this Court, Phillips has filed an appeal from Orders on Mandate entered by the Supreme Court of Oklahoma on Mandates issued by this Court in No. 320, October Term, 1954, *Natural Gas Pipeline Company of America* v. *Corporation Commission of the State of Oklahoma*, 349 U. S. 44; No. 321, October Term, 1954, *Michigan-Wisconsin Pipe Line Company* v. *Corporation Commission of the State of Oklahoma*, 349 U. S. 908; and No. 322, October Term, 1954, *Panhandle Eastern Pipe Line Company* v. *Corporation Commission of the State of Oklahoma*, 349 U. S. 908. The said Orders entered by the Supreme Court of Oklahoma set aside Minimum Price Order No. 26,096 of the Oklahoma Corporation Commission, which was at issue before this Court in Causes Nos. 320, 321 and 322, to the extent only that said Order No. 26,096 fixes a minimum price for sales of *residue* gas under existing contracts to an interstate pipe line company. One of the questions presented by the appellant in Nos. 111-113 is whether, by reason of the Natural Gas Act and the jurisdiction of the Federal Power Commission thereunder, the Oklahoma Commission Minimum Price Order, as modified by the Orders of the Supreme Court of Oklahoma, is valid insofar as it attempts to fix the minimum price at the wellhead of natural gas purchased by Phillips at the wellhead for sale in interstate commerce for resale.

No matter what approach is taken to the problem, the price at which an independent producer such as Shell sells its gas to a gatherer and processing plant operator who is not an interstate pipe line company, should be subject to regulation by not more than one governmental agency. This Court alone can determine with finality which of the agencies has that power.

III

The Court of Appeals Has Decided a Federal Question in a Way in Conflict with Principles Announced in Decisions of This Court and Has Resolved the Issue Primarily on Considerations of Alleged Economic Necessity and Public Policy Which May Appropriately be Considered only by Congress.

In concluding that Shell's sales were in interstate commerce, the Court of Appeals disregarded the principle established in *Coe* v. *Errol*, 116 U. S. 517, decided in 1886, and applied through the years to and including *Michigan-Wisconsin Pipe Line Company* v. *Calvert*, 347 U. S. 157, decided in 1954. See: *Parker* v. *Brown*, 317 U. S. 341; *Crescent Cotton Oil Company* v. *Mississippi*, 291 U. S. 584; *Federal Compress and Warehouse Company* v. *McLean*, 291 U. S. 17; *United States* v. *Yellow Cab Company*, 332 U. S. 218; *Arkadelphia Mill. Co.* v. *St. Louis S. W. R. Co.*, 249 U. S. 134; and *Utah Power and Light Company* v. *Pfost*, 286 U. S. 165.

In the *Calvert* case this Court recognized that when gas is sold and delivered at the outlet of a processing plant to an interstate pipe line company, such gas *begins* its interstate journey or has its "*taking off*" into commerce upon delivery into the interstate line. In that case this Court,

in distinguishing the *Pfost* case, drew the following analogy which fits perfectly into the instant case. There this Court, in Footnote 6, said:

> "This court (referring to the Pfost case) found that in the operation there involved it was necessary to convert the mechanical energy into electrical energy before it could be transmitted and that this transformation was completed at the generator *where the interstate movement began.* This is analogous to the situation here where the gas is prepared by Phillips for transmission and is then conveyed into appellant's lines." (Emphasis supplied.)

The Court of Appeals concludes that there was movement of the gas at the time it was sold by Shell to Phillips, hence interstate commerce had commenced at that point. This reasoning confuses movement with interstate commerce and overlooks the principle recognized by this Court in *Federal Power Commission* v. *East Ohio Gas Company*, 338 U. S. 464, that at the destination end of the interstate movement of gas, interstate commerce ceases and intrastate commerce begins when the gas passes from the high-pressure trunk lines into the local mains. The converse of this principle is that, at the origin end of the movement, gas does not leave the area of state regulation (intrastate commerce) until it passes out of the local production and gathering lines, is processed, and then enters into the current of the interstate pipe line.

The Court of Appeals feels that consumer protection requires federal regulation from reservoir to burner-tip. This disregards the countervailing economic argument that competition in the producing field, rather than federal regulation at that point, affords more and longer lasting protection to consumers. It also constitutes judicial enlargement, upon debatable economic considerations, of the extent

to which Congress regulated the gas industry when it enacted the Natural Gas Act.

The decisions of this Court holding that under the "commerce clause" the federal government can reach local activities which affect interstate commerce, have no application here. The Natural Gas Act applies to sales "in interstate commerce" and not those "affecting interstate commerce". This Court has recognized this distinction in *Federal Trade Commission* v. *Bunte Brothers, Inc., supra.*

Conclusion

For the foregoing reasons Shell Oil Company prays that this Petition for Writ of Certiorari be granted.

Respectfully submitted,

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By WILLIAM F. KENNEY
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New York, New York: September 10, 1957.

Certificate of Service

I certify that the foregoing Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit was served upon Respondent, the Federal Power Commission, by mailing a copy thereof, postage prepaid, to each of the following attorneys for Respondent on the 10th day of September, 1957:

J. Lee Rankin, Solicitor General
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September 10, 1957

APPENDIX.

Opinion in *Shell Oil Company* v. *Federal Power Commission.*

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 15900

SHELL OIL COMPANY,

Petitioner,

versus

FEDERAL POWER COMMISSION,

Respondent.

Petition for Review of an Order of the Federal Power Commission, sitting at Washington, D. C.

(June 29, 1957.)

Before BORAH, RIVES and BROWN, Circuit Judges.

BORAH, Circuit Judge: This is a companion case to *Deep South Oil Company of Texas* v. *Federal Power Commission*, No. 15,849, this day decided, in that Shell Oil Company, pursuant to Section 19(b) of the Natural Gas Act, is seeking review of the order of the Federal Power Commission which is the subject also of review in the *Deep South* case.

While the facts in the instant case are similar to those presented in *Deep South*, they are not identical thereto, and for present purposes they may be summarized as follows:

Petitioner herein, Shell Oil Company, is engaged in the business of exploring for, producing, refining and marketing petroleum and petroleum products, and with respect to its Texas operations, it produces and sells "casinghead gas" at or near the wellhead from nineteen oil wells in the McElroy Field and eight oil wells in the Nome Filed. It also sells "gas well gas" from one well in the latter field.

The casinghead gas which is produced in the McElroy Field is sold to Phillips Petroleum Company pursuant to a contract entered into between Phillips and petitioner's assignor on May 7, 1936. The contract provides, among other things, that Phillips shall pay to the seller fifty percent of the net proceeds received from any sale of the gas which it sells from the gasoline plant. Prior to delivery under the contract the gas from each of the nineteen wells located in this field passes through the wellhead and into a flow line which is connected with a single central field separator (located on Shell's lease) where the gas is separated from crude oil and free water. Within a few feet from the point at which the gas leaves this separator it is metered and delivered and title thereto passes to Phillips. As in *Deep South*, the gas sold by petitioner is commingled in the purchaser's field pipelines with casinghead gas from a number of other wells in the field and the commingled mass of gas thereafter enters Phillips' Crane gasoline plant where it is scrubbed, compressed, and run through absorption towers for the removal of liquefiable hydrocarbons. The greater part of the gas is thereafter sold by Phillips at the tailgate of the Crane plant to El Paso Natural Gas Company. Inasmuch as this gas contains too high a percentage of hydrogen sulphide and carbon dioxide for use as a domestic burner tip fuel, El Paso further treats the gas which it purchases to remove these incombustible diluents, dehydrates the gas, and then turns it into one of its transmission lines for transportation in other States.

All of Shell's gas, both casinghead and gas well gas, which is produced in the Nome Field is sold to Texas Gas Pipeline Corporation, a subsidiary of Texas Gas Corporation, pursuant to a contract entered into on October 15, 1954. As in the contract between Deep South and Texas Gas, the contract for the sale of Shell's gas from the Nome Field similarly commits to the performance thereof all of the gas to be produced from Shell's leases in that field and provides that the gas is to be delivered in a full stream without the extraction of gasoline or other hydrocarbons. Likewise, as in the case of *Deep South*, the purchaser receives delivery of the casinghead gas at the outlet valve of field separators and the gas well gas is delivered at the wellhead. After taking title and delivery at these points, the purchaser then commingles the gas in its field pipelines with gas purchased from many other sources and transports the commingled mass to the Winnie processing plant which is owned and operated by its parent corporation. At the Winnie plant the gas is processed for the removal of water vapor and liquefiable hydrocarbons and thereafter Texas Gas Pipeline Corporation receives for interstate shipment a portion of the processed gas.

As we noted in the *Deep South* opinion, the proceedings in this cause as well as in Cases Nos. 15,849 and 15,884, were consolidated before the Commission for hearing and in both the presiding examiner's decision and the Commission's Opinion No. 284, it was determined that all sales of natural gas by Deep South, Shell, and Humble Oil, there under consideration, were sales of natural gas in interstate commerce for resale within the meaning of the Natural Gas Act and that each of the petitioners was a "natural-gas company" subject to the Commission's jurisdiction.

In this review proceeding, the basic contentions and the grounds asserted for setting aside the Commission's order are in essence identical to those urged by petitioner in the

Deep South case, *supra*, and what we have said in that case is dispositive of those issues. However, and in view of petitioner's vigorous assertion that its sales to Phillips of casinghead gas which must be processed by both its purchaser and the subsequent buyer, El Paso, are not for "resale" but for "manufacture," we shall set forth in this opinion our reasons for rejecting this argument.

Petitioner relies strongly on the "purpose" clause of its contract with Phillips which provides that the casinghead gas sold thereunder is conveyed to the buyer for the purpose of manufacturing gasoline or such other products as may be manufactured at the Crane plant. It should not be overlooked, however, that this contract contains no limitation on the authority of Phillips to dispose of the gas in any way it sees fit, and affirmatively provides that the buyer shall have the right to sell any or all surplus gas remaining after the "extraction" of gasoline and also provides for the payment to petitioner of fifty percent of the receipts from such sales. Thus, the true purpose of the contract includes the sale of the gas which remains after processing as well as the sale of extracted products. But be this as it may, the legal determination of the question rests not upon the parties' use of the word "manufacture," but upon the actual disposition of the gas. The record here clearly shows that the gas sold to Phillips is resold by it and that the parties contemplated that the buyer would resell the gas in wholesale quantities is revealed in Section 3.02 of the contract which reads: "Buyer has applied to the Federal Power Commission for a Certificate of Public Convenience and Necessity *in order to establish a market for the gas committed hereto and to perform its obligations to seller under this contract. . . .*" (Emphasis supplied.) Thus, as in *Deep South*, there can be no question that petitioner is making sales in interstate commerce of natural gas for resale within the meaning of the Act.

Accordingly, the order of the Commission must be and the same hereby is affirmed.

AFFIRMED.

BROWN, Circuit Judge: I dissent for reasons hereafter to be filed.

A true copy

Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit

By CLARA R. JAMES
Deputy

New Orleans, Louisiana

[SEAL]

Dissenting Opinion of Brown, C. J.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 15849

DEEP SOUTH OIL COMPANY OF TEXAS,
Petitioner,

versus

FEDERAL POWER COMMISSION,
Respondent.

No. 15900

SHELL OIL COMPANY,
Petitioner,

versus

FEDERAL POWER COMMISSION,
Respondent.

No. 15884

HUMBLE OIL & REFINING COMPANY,
Petitioner,

versus

FEDERAL POWER COMMISSION,
Respondent.

No. 16130

CONTINENTAL OIL COMPANY,

Petitioner,

versus

FEDERAL POWER COMMISSION,

Respondent.

Petitions for Review of Orders of the Federal Power Commission, sitting at Washington, D. C.

(July 30, 1957.)

Before BORAH, RIVES and BROWN, Circuit Judges.

BROWN, Circuit Judge, dissenting: Again, my differences, while substantial are basic and, in this approach, as before, *Magnolia Petroleum Co.* v. *Federal Power Commission*, 5 Cir., 236 F. 2d 785 at 793 to 811, I accept the Court's fair and faithful outline of the cases. Since these cases[1] present the common problem of jurisdiction of the Federal Power Commission over the first sale by an oil-gas-well producer made before production or gathering has ended, I treat them together despite minor variations in factual details.

Likewise, it both simplifies and emphasizes the nature of this problem to concentrate primarily upon the most

[1] In 16,130, *Continental Oil Company* v. *Federal Power Commission*, 5 Cir., . . . F. 2d . . . [June 29, 1957], procedural problems arise and are discussed. I am in agreement with the Court's disposition of these, and my differences as to that case relate solely to the basic issue.

common transaction[2]—the sale of casinghead gas to a processor who in turn sells residue gas to an interstate pipe line.

In this way we come to see what might otherwise be obscured. The problem really is: What did Congress in 1938 mean by the language of Section 1(b).[3] I purposefully emphasize 1938. For the circumstances of the passage of the Natural Gas Act were so unique that, we are told, "• • • *prior* constitutional decisions, not what we have since decided or would decide today, form the measure of the gap which Congress intended to close by this Act. *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, 314 U. S. 498, 508, 86 L. Ed. 371, 377 • • •; and see *Parker* v. *Motor Boat Sales*, 314 U. S. 244, 250, 86 L. Ed. 184, 191 • • •," *Federal Power Commission* v. *East Ohio Gas Company*, 388 U. S. 464, 472, 94 L. Ed. 268, 277.

This refers, of course, to the oft repeated history that Congress legislated to fill the gap created by specific decisions[4] of the Supreme Court. *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission*, 332 U. S. 507, 517-519, 92 L. Ed. 128, 137-139.

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[2] Deep South to Texas Gas to Texas Eastern.
Shell to Texas Gas Pipeline to Transcontinental.
Shell to Phillips to El Paso Natural Gas.
Humble to Processors to Pipe Line Companies.

[3] §1(b), 15 USCA 717(b):

"The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption • • • and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas • • • or to the production or gathering of natural gas • • •."

[4] *Missouri ex rel. Barrett* v. *Kansas Natural Gas Co.*, 265 U. S. 298, 310, 68 L. Ed. 1027, 1031; *Public Utilities Commission* v. *Attleboro Steam & Electric Co.*, 273 U. S. 83, 89, 71 L. Ed. 549, 553; and see *Pennsylvania Gas Co.* v. *Public Service Commission*, 252 U. S. 23, 64 L. Ed. 434, subsequently repudiated *East Ohio Gas Co.* v. *Tax Commission*, 283 U. S. 465, 73 L. Ed. 1171.

This has at least a dual significance. First, it makes terribly important just what those cases decided, because it was the decisions which created the gap. And second, as 1938 Congressional preoccupation with the gap is the test, the jurisdictional parts of the Act must be viewed through 1938 lenses. With that outlook, can it be said that Congress knowingly set in train the consequences which flow from these decisions?

The first becomes of some importance in the Court's view because, in the final analysis, the conclusion reached in *Deep South* rests upon a Committee report[5] and the decision of *Phillips Petroleum Company* v. *Wisconsin*, 347 U. S. 672, 98 L. Ed. 1035. The fact is, of course, that neither of the two cases, note 4, *supra*, dealt even remotely with the sale by a producer in an oil field to a processor who in turn sold to an interstate pipe line. In *Attleboro* the utility generated and transported electricity; in *Kansas* the seller to the local distributing company was an integrated producer-transmission pipe line company. So far as *Phillips Petroleum Company* v. *Wisconsin, supra,* which I accept, is concerned, I hardly think that, with the Court's studied traditional refusal to deliver advisory opinions even on matters which it knows are then somewhere in the judicial mill and which will inevitably come through its own grist, the Supreme Court meant to decide that *all* sales of gas which, because of molecular identity, flow ultimately from Texas or Louisiana to New York are sales in interstate commerce.

This is but another way of saying that we face an entirely new case—one never before decided. The crucial

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[5] The *Deep South* opinion states: "The Committee reports on the bill which became the Natural Gas Act specifically stated that 'sales for resale, or so-called wholesale sales in interstate commerce (for example, sales by producing companies to distributing companies) * * * have been considered [by the courts] to be not local in character, and even in the absence of Congressional action not subject to State regulation.'" H. R. Rep. No. 709, 75th Cong., 1st Sess. 1-2; Senate Rep. No. 1162, 75th Cong., 1st Sess. 1-2.

issue here is whether the sales are in interstate commerce as meant by §1(b). At the outset in *Phillips* that issue was conceded as "Petitioners admit that Phillips engages in 'the sale in interstate commerce of natural gas for resale,' as, of course, they must. *Interstate Natural Gas Co. v. Federal Power Com.*, 331 U. S. 682, 687-689, 91 L. Ed. 1742, 1746-1748," 347 U. S. 672 at 677, 98 L. Ed. 1035 at 1045. The second issue involved here is whether these sales are made in the course of production or gathering. The similar contention in *Phillips* fell by the Court's rejecting the Commission's finding and the plain holding that "We are of the opinion * * * that the finding is without adequate basis in law, and that production and gathering, in the sense that those terms are used in §1(b), end before the sales by Phillips occur," 347 U. S. 672, 678, 98 L. Ed. 1035, 1045. And certainly *Interstate Natural Gas Company* v. *Federal Power Commission*, 331 U. S. 682, 91 L. Ed. 1742, so heavily relied on in *Phillips* cannot have remotely decided our case. To Interstate's contention "that the sales to the three pipe line companies are a part of the gathering process and consequently not within the Commission's power of regulation," the court answered positively "By the time the sales are consummated, nothing further in the gathering process remains to be done," 331 U. S. 682 at 692, 91 L. Ed. 1742 at 1749. This case recognizes also that principles of constitutional law and statutory construction are not equated with laws of physics, so that the inquiry is something more than the schoolboy's quest for molecular identification. Concerning the Congressional purpose to leave production and gathering to the States, the Court stated:

> "It was the intention of Congress to give the States full freedom in these matters. Thus, where sales, though technically consummated in interstate commerce, are made during the course of production and gathering and are so closely connected with the local incidents of that process as to render rate regulation

> by the Federal Power Commission inconsistent or a substantial interference with the exercise by the State of its regulatory function, the jurisdiction of the Federal Power Commission does not attach * * *," 331 U. S. 682 at 690, 91 L. Ed. 1742 at 1748.

So nothing written so far tells us authoritatively what Congress in 1938 meant to do about sales made prior to completion of production and gathering. Did Congress intend to place this under the control of a remote Federal bureau?

I think the consequences of any such holding are so far-flung and so disturbing to the delicate balance in our system of dual sovereignty that, divining the legislative will as is the judicial function, *United States* v. *American Trucking Associations,* 310 U. S. 534, 543, 84 L. Ed. 1345, 1350, and whether we look at this through 1938 lenses or 1957 bifocals, I cannot believe that Congress in this innocuous way thought that it was remaking the concept of our political economy.

Since it is the fact of *movement*[6]—continuous and almost irrepressible movement—from the time the gas molecule first begins to stir and is once released from the bowels of the earth until consumed at the Brooklyn burner tip—that is the characteristic which to the Court makes this inevitably interstate, the impact has been dramatically described, *Heisler* v. *Thomas Colliery Co.,* 260 U. S. 245, 259-260, 67 L. Ed. 237, 243:

> "The reach and consequences of the contention repel its acceptance. If the possibility, or, indeed, certainty, of exportation of a product or article from a state, determines it to be in interstate com-

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[6] The Court's decision of "sale in interstate commerce" is a bootstrap conclusion: it is an interstate sale because of the movement and yet the movement occurs only because of the sale.

> merce before the commencement of its movement from the state, it would seem to follow that it is in such commerce from the instant of its growth or production; and in the case of coals, as they lie in the ground. The result would be curious. It would nationalize all industries; it would nationalize and withdraw from state jurisdiction and deliver to Federal commercial control the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts, and the woolen industries of other states at the very inception of their production or growth; that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof,' wool yet unshorn, and coal yet unmined, because they are, in varying percentages, destined for and surely to be exported to states other than those of their production."

Such a holding withdraws from the states a traditional field for effective regulation of an economic activity of major importance to the general welfare of the state. Specifically, such a holding will forbid state regulation of oil and gas production activities insofar as that state policy is aimed at, or works through, the use of minimum prices.

This is no theoretical academic possibility. This is an actual fact of a present doctrine whose applicability is limited only by the ultimate judicial declaration of the earth-ward limits of a jurisdictional sale. As a part of the yet unascertained fallout of the atomic *Phillips* decision, the Court in *Natural Gas Pipeline Company of America* v. *Panoma Corporation* and *Natural Gas Pipeline Company of America* v. *Corporation Commission of the State of Oklahoma*, 349 U. S. 44, 99 L. Ed. 866, held that as to sales within the jurisdictional limits of *Phillips*, the State of Oklahoma was forbidden to apply its otherwise con-

stitutional[7] power to prescribe minimum prices for Oklahoma gas sold or delivered. The Court with brief but awesome finality said:

> "In these cases Oklahoma has attempted to fix a minimum price to be paid for natural gas, after its production and gathering has ended, by a company which transports the gas for resale in interstate commerce. We held in Phillips Petroleum Company *v.* Wisconsin, 347 U. S. 672, 98 L. Ed. 1035 * * * that such a sale and transportation cannot be regulated by a state but are subject to the exclusive regulation of the Federal Power Commission. The Phillips case, therefore, controls this one." 349 U. S. 44 at 44-45, 99 L. Ed. 866 at 867.

For these purposes it is of slight comfort to these states that, as *Panoma* plainly said, this was applied to a post-production and gathering sale. For the basis for the decision was the jurisdictional application of the Act. With the inexorable physical characteristic that traces molecules from Permian Basin to Queenstown Heights and joins body, fleece and tail to Mary's ubiquitous fabled lamb, wherever goes F. P. C. jurisdiction, so goes *Panoma*. There it was *after* gathering. Here it is at the wellhead before gathering is completed. The majority's decision takes us that far. Where can the states go? To the wellside of the Christmas tree? To the bottom of the well?

Wherever it is fixed is not far enough, nor may it ever be. For the thesis of the majority's opinion is to mix

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[7] Apart from the effect of the Natural Gas Act, the predecessor of this very same state order (identical except as to the price) was upheld in *Cities Service Gas Company* v. *Peerless Oil & Gas Company*, 340 U. S. 179, 95 L. Ed. 190, and *Phillips Petroleum Company* v. *State of Oklahoma*, 340 U. S. 190, 95 L. Ed. 204. As to these, the Court in Panoma said, "In those cases we were dealing with constitutional questions and not the construction of the Natural Gas Act * * *," 349 U. S. 44 at 45, 99 L. Ed. 866 at 867.

Boyles and *Phillips* law to come up with the startling legal-statutory interpretation law that because gas, once released is in a constant state of movement, that *movement,* from the very moment it first started, is characterized (intra or interstate) by its final destination. This means that if Oklahoma prescribes the price, as has Kansas[8], as a condition precedent to the right of *withdrawal* of this valuable domestic resource, the sale of that gas *out* of the well—by which alone would there ever be production at all—was of necessity *in interstate commerce,* and such sale, and the movement of the gas occasioned by it would fall under *Panoma.*

Of course, I am not saying that this consequence makes the law invalid or unwise. I assume that Congress could within the broad compass of its constitutional powers over commerce do this very thing. But the fact, so often repeated is that "the Natural Gas Act did not envisage federal regulation of the entire natural-gas field to the limits of constitutional power. Rather it contemplated the exercise of federal power as specified in the Act, particularly in that interstate segment which the states were powerless to regulate because of the Commerce Clause of the Federal Constitution. The jurisdiction of the Federal Power Commission was to complement that of the state regulatory bodies. Accordingly, Congress in §1(b) of the Act not only prescribed the intended reach of the Commission's power, but also specified the areas into which this power was not to extend," *Federal Power Commission* v. *Panhandle East-*

[8] Now pending before the Supreme Court with probably jurisdiction noted, 25 Law Week 3351, as No. 797, is the action of the Supreme Court of Kansas, *Cities Service Gas Company* v. *State Corporation Commission of Kansas,* 180 Kan. 454, 304 Pac. 2d 528, sustaining the action of the state regulatory agency in fixing the wellhead price for withdrawal of gas. Also pending are similar Oklahoma minimum price cases, see *Phillips Petroleum Company* v. *Oklahoma Corporation Commission,* Nos. 953-955, 25 L. W. 3346; *Michigan Wisconsin Pipe Line Company* v. *Corporation Commission of State of Oklahoma,* No. 809, 25 Law Week 3271.

ern Pipe Line Co., 337 U. S. 498 at 502-503, 93 L. Ed. 1449 at 1504.

Avowedly using only a portion of its power, is it likely then that Congress meant to go this far? To think so is to attribute to them a collective ignorance of an already well-defined traditional policy in the states to regulate[9], by regulating the price at which oil or gas could be sold, this important business. Indeed, so well recognized was such state policy that, in the setting of those days, it led to the passage of the Connally Hot Oil Act,[10] 15 USCA 715 et seq. This Act gears interstate transportation of oil to state regulation. And at least everyone on the outside of a courtroom knows that modern oil-gas conservation programs, preventing waste by limiting production to meet an established market demand,[11] whether they do so directly

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[9] As shown by both pre and post-1938 decisions, these state efforts had met with Federal constitutional approval: *Champlin Refining Co.* v. *Corporation Commission*, 286 U. S. 210, 76 L. Ed. 1062 (1932); *Railroad Commission* v. *Rowan & Nichols Oil Co.*, 310 U. S. 573, 84 L. Ed. 1368 (1940); and see, *Nebbia* v. *New York*, 291 U. S. 502, 78 L. Ed. 940 (1934).

[10] The Act had its origin in the Executive Orders promulgated July 11, 1933 and July 14, 1933, under the National Industrial Recovery Act, 48 Stat. 200, chap. 90, 15 USCA 710(a), and stricken down in the celebrated case of *Panama Refining Company* v. *Ryan*, 293 U. S. 388, 79 L. Ed. 446; see *United States* v. *Gilliland*, 312 U. S. 86, 94, 85 L. Ed. 598, 604. "The purpose of the Connally Act • • • is to aid the states in enforcing laws limiting the amount of oil permitted to be produced from wells in designated fields, by prohibiting shipment of excess oil produced • • • in interstate commerce • • •." *The President of the United States* v. *Skeen*, 5 Cir., 118 F. 2d 58, 59.

[11] That this takes collective action of the interested oil-gas producing states is reflected by Congressional approval of the creation and activities of the Interstate Oil and Gas Compact, see Interstate Compact to Conserve Oil and Gas, Aug. 27, 1935, c. 781, 49 Stat. 939, Extensions Aug. 10, 1937, c. 572, 50 Stat. 617; July 20, 1939, c. 337, 53 Stat. 1071; August 21, 1941, c. 400, 55 Stat. 666; July 7, 1943, c. 494, 57 Stat. 383; Interstate Oil and Gas Compact Joint Resolution, Aug. 28, 1951, c. 350, 65 Stat. 199.

or indirectly, actually fix prices. And there need be no apology for this. For the welfare of a state whose economy rests substantially on oil and gas has a vital interest in local legislative or governmental means of stabilizing such a business. "That a legitimate local interest is at stake • • • is clear. A state is justifiably concerned with preventing rapid and uneconomic dissipation of one of its chief natural resources," *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U. S. 179 at 187, 95 L. Ed. 190 at 202.

Ten cent oil in the early thirties produced, in East Texas as elsewhere, calamity.[12] With this history so fresh in its recollection, indeed, with like contemporary problems so much then a matter for its current consideration, it is beyond my belief to think that Congress thought that, by the innocuous language of §1(b), it was letting loose a nascent force which either could, or would, or might completely alter a major business or thwart a major field of state regulation.

Chief Justice Vinson, recognizing in *Interstate Natural Gas Company* v. *Federal Power Commission*, 331 U. S. 682 at 690, 91 L. Ed. 1742, 1748, *supra*, that some sales "technically consummated in interstate commerce • • • are so closely connected with • • • local incidents • • • as to render rate regulation by the Federal Power Commission inconsistent or a substantial interference with the exercise by the State of its regulatory function, [and] the jurisdiction of the Federal Power Commission does not attach," showed great prescience.

Especially so, if, for example, the current holding and contention of the Federal Power Commission is followed[13] that the price for which independent producers may sell

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[12] It led to what the Governor of Texas considered insurrection requiring declaration of martial law as recently enacted conservation laws were enjoined by Federal Courts. *Sterling* v. *Constantin*, 287 U. S. 378, 77 L. Ed. 375.

[13] We now have nine such cases pending on petition for review from the Federal Power Commission.

their gas to a pipe line is controlled by *City of Detroit* v. *Federal Power Commission*, D. C. Cir., 230 F. 2d 810, cert. den. 352 U. S. 829, 1 L. Ed. 2d 48. That case, with its emphasis on cost data as a part of a so-called rate base, points out that if a "fair-field" price is to be justified, it can be so only when it does not produce more than reasonably necessary to permit continued exploration for and development of gas reserves. That, in the light of the oft-repeated statement that "Protection of consumers against exploitation at the hands of natural-gas companies was the primary aim of the Natural Gas Act," *Phillips Petroleum Company* v. *Wisconsin*, 347 U. S. 672, 685, 98 L. Ed. 1035 at 1049, may mean that it is the positive duty of the Federal Power Commission aggressively to demand and then approve only the *lowest* rate. But the rate which is most favorable to consumers in Brooklyn, *i.e.*, the *lowest* possible one, may run counter to, and could frustrate altogether, the domestic policy of Oklahoma,[14] or Kansas, or Texas, or New Mexico.

Again, I repeat, Congress could surely make the one subject to the other. But the question remains: where do we find a declaration of any such far-reaching purpose?

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[14] In *Cities Service Gas Co.* v. *Peerless*, *supra*, at 340 U. S. 183, 95 L. Ed. 200, the Court pointed out that the Oklahoma

> "* * * Commission concluded that there was no competitive market for gas in the Guymon-Hugoton Field, that the integrated well and pipe-line owners were able to dictate the prices paid to producers without pipe-line outlets, and that as a result gas was being taken from the field at a price below its economic value. It further concluded that the taking of gas at the prevailing prices resulted in both economic and physical waste of gas * * *."

If long-line transmission pipe-lines by mere location and availability have that monopolistic power to drive down prices, what will their power be when, acquiring as a new and somewhat unusual ally, the Federal Power Commission, the two move jointly together to drive prices down further in the name of consumer public interest? What does Oklahoma do in the meantime? What happens to its landowner royalty owners, its oil companies, its banks, its public treasury?

The holding of a jurisdictional sale at the wellhead does more than prohibit, and thus invade, state regulation. It affirmatively imposed substantial obligations of the most awesome kind which, although appropriate to utility regulation and within the conceded constitutional power of Congress, could hardly have been anticipated by Congress for application to a person engaged in the local activity of drilling and bringing in an oil or gas well. Here, we see that we cannot brush this aside, as does the majority as mere pessimsitic hyphothetical prophesies.[15] Holding, as mere pessimistic hypothetical prophesies.[15] Holding, (*sic*) itself sets in train a whole series of requirements which makes it plain that when the wildcater spudded in, he may have thought himself a free enterpriser in the American tradition, but when the well comes in and the gas is sold to a person who sells it to another who sells it to a pipe line who transports it to a distributing company who sells it to a homeowner, he has become a public utility.

For the Court to say "no such issues are presented in the instant case, and it will be time enough to pass upon those issues if and when they are properly presented" is to forget so soon what we struggled with a year ago in *Magnolia Petroleum Company* v. *Federal Power Commission*, 5 Cir., 236 F. 2d 785, cert. den. 352 U. S. 968, 1 L. Ed. 2d 322, and the related cases where the series 174, 174A,

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[15] In *Deep South*, the Court says: "Petitioner argues, however, that what is involved here is 'more than merely regulation of sales,' for the reason that our decision herein will give rise to certain hypothetical situations predicated upon assumed future actions by the Commission, *viz.*, that should certificates of public convenience and necessity which petitioner will apply for be refused, Deep South must close its wells and suspend operations, and that petitioner must obtain the Commission's permission before discontinuing sales from a well which has been found subject to Federal jurisdiction. No such issues are presented in the instant case, and it will be time enough to pass upon those issues if and when they are properly presented."

174B Order[16] cases were under review. Not here concerned with the validity of those regulations and accepting them for what they state, these regulations with their injunctive and criminal sanctions under Sections 20, 21(a), 15 USCA §717s, §717t(a), compel definitive action. They compel it now. Noncompliance subjects the independent producer to penalties now. Under Section 157.23(a) the Order requires an application for certificate of public convenience and necessity and, once obtained with service performed, Section 157.28 forbids abandonment of any sale or service without the express permission and approval of the Commission, *J. M. Huber Corporation* v. *Federal Power Commission*, 3 Cir., 236 F. 2d 550, cert. den. 352 U. S. 971, 1 L. Ed. 2d 324.

For an industry which has been built upon the inveterate, irrepressible, sometimes flamboyant, optimism of people anxious to take great risks to reap great rewards, suddenly to make out of it the staid and conservative business of a public utility, represents such a radical abandonment of the past that I cannot believe that Congress meant to do this to the thousands who annually bring, or try to bring, or hope to bring, in gas and oil wells. Especially is this so since the making of the very first sale which allows a molecule to make an interstate journey subjects that operator permanently to the jurisdiction of a remote agency until he can prove himself entitled to be freed. Even more so since those very same Orders prescribe that he cannot make any changes in the price which he is willing to sell his gas without first filing, as required under Section 154.92(a), a rate schedule and proving his right to it. And that very same Order, Section 154.94, as does the consistent administrative practice of the Commission, forbids either the use or application of automatic contract step-up

[16] See my dissent, *Magnolia Petroleum Company* v. *Federal Power Commission*, 236 F. 2d 785 at 793, especially Part I, page 797 through 808, which sets forth these regulations and describes their operation in detail.

rate escalation clauses. The operation of these Orders in the context of the Act under Section 4 and 5, 15 USCA 717c, 717d, exposes the operator to the possibility of an irretrievable loss by suspension for the maximum period of five months, *Humble Oil & Refining Company* v. *Federal Power Commission*, 5 Cir., 244 F. 2d 315 [7 cases]; *Sun Oil Company* v. *Federal Power Commission*, 5 Cir., 244 F. 2d 77. They subject the operator to the burden of proving as just and reasonable any proposed increase. And they expose him all the time to the likelihood that under Section 5 the Commission may determine that what he and his purchaser have agreed to, either in initial rates or those subsequently filed and approved, now produces an unjust and unreasonable rate which can no longer be collected.

I would think that when the Congress sets out radically to change a local free enterprise business[17] to that of a regulated utility, it would do so in unmistakable terms. I would think that it would not only say so, but prescribe as well adequate machinery[18] for the fulfillment of such an under-

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[17] As of December 31, 1954, there were 511,200 producing wells. During 1954, in addition to 29,773 oil wells and 19,169 dry holes, 3,977 gas wells were brought in. Statistical Abstract of the United States 1956, page 741.

[18] To those of us dealing with these cases since the *Phillips* decision, the effort of the Commission and its overburdened staff to assimilate and handle the thousands of applications for certificates of public convenience and necessity, for rate increases, etc., can evoke only the most sympathetic appreciation for a problem for which it was not equipped by Congress. In October 1954 there were some 2,100 rate filings with 9,702 being received in January 1955.

Of more fundamental significance than the Congressional omission of the working tools (an adequate staff and budget) is the complete failure to prescribe the tools of substance, i. e., the standards to be applied for utility rate making in this field. The Commission immediately recognized this by its Order instituting Docket R-142 under the revealing Heading of "Consideration of principles and Methods to be Applied in the Fixing of Rates to be Charged by

taking. I would have thought that such a spectacular purpose would be soon evident and would not take eighteen years to discern.

Independent Producers for Natural Gas Sold in Interstate Commerce for Resale" which stated:

> "2. Necessary to a determination of the rates permitted by the Natural Gas Act to be made, demanded or received by a natural-gas company is the choice of methods to be used in determining the just and reasonable rate for any particular sale. The Commission, recognizing the basic differences between the operations of a producer and those of a pipe-line company, is desirous of securing any information, suggestions or proposals bearing upon the possible effect the several approaches might have upon the public interests towards which the Natural Gas Act is directed.
>
> "3. The Commission, therefore, is inviting the submission of suggestions as to the principles and methods to be applied by it in its regulation of the rates to be charged by independent producers for the transportation or sale of natural gas subject to the jurisdiction of the Commission. * * *
>
> "4. This is a matter of national importance and the Commission invites members of the industry, producers, gatherers, interstate pipe-line companies, distributors, consumers, groups and associations representative thereof, State commissions, municipalities, and any other interested persons to submit information, data, views, comments or suggestions in writing concerning the problem. * * *"

But the hearing could hardly supply what the statute omitted, so it was not surprising that after hearings in R-142 scheduled in December 1954 and held at various times in 1955, the Commission by order December 1, 1955, terminated R-142 with this significant finding:

> "* * * the information gained in this proceeding convinces us that, on the basis of the record herein, we should not lay down any rules as to what would be necessary or appropriate for consideration in determining the just and reasonable rates of any independent producer subject to our jurisdiction under the Natural Gas Act.
>
> "Accordingly, after full consideration of the suggestions, comments, and recommendations submitted, it appears to the Commission that adoption of any standards, principles, or methods respecting the matters and issues involved herein is not appropriate or necessary in carrying out the provisions of the Natural Gas Act. We so find."

In this analysis I have concentrated upon the searching out of Congressional intent. In that process, I think the so-called specific exemption of production and gathering is to be read as a part of §1(b) and not treated as though it stood alone. In that process, also, there are other aids advanced by the parties which point significantly in this direction.

At the outset it is significant that this is an "*in* interstate" commerce Act not one "*affecting*"[19] interstate commerce. The test then is not how much Congress covered, but rather how much of a field which it deliberately limited did it intend to cover. *Federal Trade Commission* v. *Bunte Bros. Inc.*, 312 U. S. 349, 85 L. Ed. 881. The legislative history[20] indicates that the "in interstate" commerce

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[19] Cf. for example other regulatory statutes passed prior to or contemporaneously with the Natural Gas Act: The Fair Labor Standards Act of 1938 (Act of June 25, 1938, 52 Stat. 1060, 29 USCA 201, 206), extended Federal regulation to conditions of employment "in the production of goods for commerce." The Bituminous Coal Act of 1937 (Act of April 26, 1937, 50 Stat. 72) applied Federal authority to matters directly "affecting" interstate commerce. The National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 USCA 141), imposed regulation upon matters "affecting" interstate commerce.

[20] One of Petitioner's briefs concisely traces this history:

As originally introduced, the bill which became the Natural Gas Act defined the scope of the Commission's jurisdiction in these words [H. R. 4008, 75th Cong., 1st sess. (1937)]:

> "The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale of *such* natural gas for resale to the public, and to natural-gas companies engaged in such transportation or sale * * *" (emphasis supplied).

Similarly, §2(5) of the original version of the bill contained this definition of "natural-gas company":

> " 'Natural gas company' means a person engaged in the transportation of natural gas in interstate commerce, or the sale of *such* gas for resale to the public" (emphasis supplied).

standard was articulately adopted to determine what "sales" were covered.

And since "commerce among the states is not a technical legal conception, but a practical one, drawn from the course of business," *Swift & Company* v. *United States,* 196 U. S. 375, 398, 49 L. Ed. 518, 525, and "We must accordingly mark the beginning and end of a particular kind of interstate commerce by its own practical consideration," *United States* v. *Yellow Cab Company,* 332 U. S. 218, 231, 91 L. Ed. 2010, 2020, the test cannot be the simple one of the physical property of gas which keeps it in constant movement from the bottom of the well to the burner tip. " 'Practical continuity' does not always made an act a part of interstate commerce," *Southern Pacific Co.* v. *Gallagher,* 306 U. S. 167 at 177, 83 L. Ed. 586 at 593. This is so since with casinghead gas the sales precede local processing which is essential to extract the valuable economic components of it and to prepare the gas for its interstate transmission and use as fuel. The processing itself is a local or intrastate activity and can hardly be

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During hearings, objection was raised to the failure of the bill to "confine jurisdiction to gas sold in interstate commerce." [Hearings before the House Committee on Interstate and Foreign Commerce on H. R. 4008, 75th Cong., 1st sess., pp. 103-105 (1937)] The objecting witness, Mr. Russell G. Hunt, then offered the following amendment to §2(5):

> " 'Natural-gas company' means a person engaged in * * * the sale in interstate commerce of such gas for resale to the public."

Without material change, this amended definition, together with a corresponding change in §1(b), appeared in the bill as favorably reported out by the House Committee, [H. R. 6586 (1937) and H. Rept. No. 709, 75th Cong., 1st sess. (1937)] and in the same form in the Act as passed.

See also *Federal Power Commission* v. *Panhandle Eastern Pipe Line Company,* 337 U. S. 498, 512, 513, footnote 16, 93 L. Ed. 1499 at 1509.

regarded as being "in" interstate commerce.[21] That the commodity almost certainly, or even inevitably, will be shipped out of the state does not make all of the activity interstate commerce even though it is done in the course of a part of that movement.[22]

In my approach to this matter, I treat these, and the contrary ones urged by the Commission,[23] as aids only. Dealing, as they do, with logs, iron ore, cotton, and the like, they hardly fit the fugitive expansive nature of gas. And, I do not attempt here to assert or explore their final, legal, decisive significance since they may be of "* * * that class of cases [in which] the question is not with respect to the extent of the power of Congress to protect interstate commerce, but whether a particular exercise of state power in view of its nature and operation must be deemed to be in conflict with that paramount authority," *Santa Cruz Fruit Packing Company* v. *NLRB*, 303 U. S. 453 at 466, 82 L. Ed. 954 at 960. But I do think they offer some relevant assistance in attempting to assay what Congress,

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[21] See *Crescent Cotton Oil Company* v. *Mississippi*, 257 U. S. 129, 66 L. Ed. 166; *Parker* v. *Brown*, 317 U. S. 341, 360-361, 87 L. Ed. 315, 331; *Federal Compress & Warehouse Company* v. *McLean*, 291 U. S. 17, 78 L. Ed. 622; *Chassaniol* v. *Greenwood*, 291 U. S. 584, 78 L. Ed. 1004.

[22] See *Coe* v. *Errol*, 116 U. S. 517, 525, 29 L. Ed. 715, 718; *Superior Oil Co.* v. *Mississippi*, 280 U. S. 390, 74 L. Ed. 504; *Empresa Siderurgica S. A.* v. *County of Merced*, 337 U. S. 154, 157, 93 L. Ed. 1276, 1280; *Department of Treasury of Indiana* v. *Wood Preserving Corporation*, 313 U. S. 62, 85 L. Ed. 1188; *Southern Pacific Co.* v. *Gallagher*, 306 U. S. 167, 83 L. Ed. 580; *Atlantic Coast Line Railroad Co.* v. *Standard Oil Company*, 275 U. S. 257, 72 L. Ed. 271; *Oliver Mining Company* v. *Lord*, 262 U. S. 172, 67 L. Ed. 929; *Utah Power & Light Company* v. *Pfost*, 286 U. S. 165, 76 L. Ed. 1038; *Arkadelphia Milling Company* v. *St. Louis S. W. R. Co.*, 249 U. S. 134, 63 L. Ed. 517; *Crescent Cotton Oil Company* v. *Mississippi*, 257 U. S. 129, 66 L. Ed. 166; *Heisler* v. *Thomas Colliery Company*, 260 U. S. 245, 259, 260, 67 L. Ed. 237, 243.

[23] See, e.g., *Shafer* v. *Farmers Grain Company*, 268 U. S. 189, 69 L. Ed. 909; *Lemke* v. *Farmers Grain Company*, 258 U. S. 50, 66 L. Ed. 458; *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, 66 L. Ed. 239.

familiar generally with legal concepts applied in this field throughout the years, could have had in mind.

But I do think we must recognize that, as in the situation which I analyzed in detail in which the state is deprived of the right to regulate the price of gas, current authoritative decisions also withdraw a substantial part of the gas business and the gas produced from the area of state taxation permitted in so many of these cases cited in notes 22 and 23, *supra*. In *Michigan-Wisconsin Pipe Line Company* v. *Calvert*, 347 U. S. 157, 98 L. Ed. 583, the Court unanimously held that a Texas tax, applicable on gas at the outlet of an independent gasoline plant as it flows into the lines connecting with an interstate transmission system, violates the Commerce Clause. Of course, on the principle of *Panoma* to the extent that the jurisdictional sales go to the wellhead or beyond, the movement[24] effected by such sales is in interstate commerce and must likewise be removed from state taxation under *Calvert*. This means that at least to some extent tax cases are pertinent and in any event, this points up another consequence of a startling kind not shown to have been within Congressional contemplation.

These problems like the question of whether casinghead is "natural gas" and whether the sale is for "resale" or for a manufacturing process and later resale cannot be determined by artificial, mechanical standards, dictionary

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[24] *Calvert* puts it in terms of movement, i.e., transportation

> "The problem in this case is not whether the State could tax the actual gathering of all gas whether transmitted in interstate commerce or not, cf. *Hope Natural Gas Co.* v. *Hall*, 274 U. S. 284, 71 L. ed. 1049, 47 S. Ct. 639, *supra*, but whether here the State has delayed the incidence of the tax beyond the step where production and processing have ceased and transmission in interstate commerce has begun. • • • " *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U. S. 157 at 166-167, 98 L. Ed. 583 at 592.

If the mechanical-physical movement test is decisive, it is difficult to see why the author and two Associate Justices would so soon dissent in *Phillips*.

definitions or, equally unauthoritative, judge-made definitions of some physical or scientific phenomenon.

The Act carefully limits it to the sales for resale of natural gas. It is uncontradicted that what is sold is *something* other than the fuel gas which ultimately goes into the transmission lines. Presumably the purchasers buy this casinghead gas for *all* of its constitutent elements. Indeed, in the case of Shell, the contract between it and Phillips began in 1938. It was not until July 1950 that any part of the residue gas sold by Phillips to El Paso Natural Gas. Until 1950 the residue gas was continuously flared. What did Phillips buy during these twelve years? What did Shell sell during these twelve years? What made it change merely because Phillips found a new use or outlet in 1950? Obviously Phillips bought casinghead gas for the valuable liquefiable hydrocarbons (natural gasoline, butane and propane). These are still a major constitutent of what they buy. The same is true in the other cases.

If the purchaser buys the gas for its *multiple* use, does not the producer sell for the same purposes. As to casinghead gas, the sale then is for (1) the extraction of valuable liquefiable hydrocarbons, (2) the removal of all valuable hydrocarbons, (3) the processing to eliminate impurities and (4) the sale of the residue to a pipe line company for resale. Now a sale for all four purposes is not a sale for one. And yet the Act itself defines the jurisdictional sale as "a sale in interstate commerce of natural gas for resale for ultimate public consumption" and then categorically states that the Act "shall not apply to *any other* * * * *sale* of natural gas."

Does not the very difficulty of attempting to define each of these operations as "processing" or "manufacturing" or analogize gas to a dead chicken, frozen or otherwise, *East Texas Motor Freight Lines, Inc.* v. *Frozen Food Express*, 351 U. S. 49, 52, 54, 100 L. Ed. 917, 922-923, 924, and the uncontradicted fact that the sales had a substantial purpose other than ultimately making fuel gas available for transmission and delivery to consumers, suggest further

that sales "in interstate commerce for resale" was meant by Congress to be those effected after such processing was completed? Here, as nearly always, the literal[25] test cannot be applied. For "* * * even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words," *United States* v. *American Trucking Associations*, 310 U. S. 534 at 543, 84 L. Ed. 1345 at 1350.

I end as I began: could Congress have intended all of these things? Because I think not, I must respectfully dissent.

A true copy

Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit

By CLARA R. JAMES
Deputy

New Orleans, Louisiana

(SEAL)

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[25] For example, the gasoline plant extracts the butane and propane from the natural casinghead gas. This is reduced to a liquid state under pressure and is distributed, as it now is widely, to communities not served by pipe lines. This very same propane, butane is then resold for "ultimate public consumption for domestic, commercial, industrial * * *" and other uses. Since, on the Commission's and Court's chemical-legal standards, it is still natural gas as the only change is from a gaseous to a liquid state, and there is no change in molecular structure, is the sale by the gasoline plant a sale of "natural gas for resale"? Is the sale by a statewide distributing company to local distributors such a sale? Likewise, suppose Shell sold the *oil* at the wellhead to a purchaser who in turn had sold the casinghead gas to Phillips, who had in turn sold the residue gas to El Paso. Is that original wellhead sale of the oil, carrying inevitably with it the casinghead gas from which all blessings and jurisdiction flow, a sale of natural gas? If not, why not? And if, as the Court holds, the Commission can establish the price which Texas Gas must pay to Deep South where Deep South's volume is but 5% of Texas Gas requirement and its output moves 95% intrastate and 5% interstate, why cannot the Commission fix the price for each barrel of this gas bearing, gas carrying oil?

Opinion in *Deep South Oil Company of Texas* v. *Federal Power Commission.*

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 15849

DEEP SOUTH OIL COMPANY OF TEXAS,

Petitioner,

versus

FEDERAL POWER COMMISSION,

Respondent.

Petition for Review of Orders of the Federal Power Commission, sitting at Washington, D. C.

(June 29, 1957.)

Before BORAH, RIVES and BROWN, Circuit Judges.

BORAH, Circuit Judge: This case comes to us on the petition of Deep South Oil Company of Texas to review, pursuant to Section 19(b) of the Natural Gas Act,[1] order of the Federal Power Commission determining that Deep South is a "natural-gas company" as that term is defined in the Act.[2]

Deep South is a small, unintegrated corporation engaged in the exploration for and the production of oil and gas.

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[1] 15 U. S. C. §717r(b).

[2] By Section 2(6) of the Natural Gas Act "natural-gas company" is defined to mean "a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale."

Its properties are located in the State of Texas, and its oil and gas facilities consist only of oil and gas well equipment, including flow lines, heaters and separators, together with such valves, tanks, and meters as are required for the operation of its wells and lines. As revealed by the record before us, Deep South owns or has an interest in and operates fourteen wells in the Big Hill Field located in Jefferson County, Texas. Five of these wells produce "casinghead gas"[3] and nine produce "full stream" or "gas well gas,"[4] and all of the gas from these wells which is not used in the field for drilling purposes by Deep South or other operators is sold to Texas Gas Corporation pursuant to a contract which was executed on February 15, 1952, for a term of twenty years. This agreement by its terms provides that the leases and lands which Deep South owns or acquires in the Big Hill area are "dedicated" to the performance of the contract, and that the gas shall be delivered at each of Deep South's wells located on the dedicated leases in a full stream, *in its natural state, without the extraction therefrom of any gasoline or other liquefiable hydrocarbons.*[5] Prior to delivery under the contract, the "casinghead gas" is separated from the oil with which it is produced at a field separator, and the "full stream gas" is treated for the removal of water at a so-called "free-water knockout." Within a few feet from the point at

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[3] "Casinghead gas" is gas that is produced along with oil from an oil well and ordinarily consists of fixed gases, principally methane in bulk with other hydrocarbons ranging from the lighter ones down to the quite heavy ones. Mixed with those hydrocarbons are water vapor, acid gases, hydrogen sulphide and carbon dioxide, in addition to other fairly common diluents such as nitrogen, helium, and various sulphur compounds, and impurities such as drilling mud, rust, sand and dirt.

[4] "Full stream gas wells," "straight gas wells," and "gas distillate wells" are synonymous terms and the gas produced therefrom is "gas well gas," which contains fewer liquefiable hydrocarbons than gas produced in association with oil.

[5] All italics herein ours.

which the gas leaves the aforementioned mechanical devices, it passes into Texas Gas' meters which are located on the leases near the wellheads from which the gas is produced. There it is measured and delivered and title thereto passes to Texas Gas. Thereupon the gas then moves from these metering points through a network of converging pipelines of progressively larger size to the purchaser's processing plant at Winnie, Texas, which is located about seven miles from the Deep South leases. During the course of this movement, the gas purchased from Deep South is commingled in the pipelines with gas which Texas Gas has purchased from other operators in the area. At the Winnie processing plant all of the casinghead gas and gas well gas purchased by Texas Gas is processed for removal of water vapor and liquefiable hydrocarbons. After processing, the gas is discharged into a common sales header and pursuant to a contract between Texas Gas and Texas Eastern Transmission Corporation a portion of such gas flows into the latter's interstate transmission lines for transportation and resale in interstate commerce. This contract between Texas Gas and the pipeline company is for a minimum of fifteen years and by its terms the gas purchase contract between Deep South and Texas Gas and the gas which may be produced from the lands and leaseholds covered thereby are "dedicated" to the performance of the contract between Texas Gas and Texas Eastern.

The proceeding before the Commission which gave rise to this petition for review was initiated by Deep South when, in conformity with Rule 1.7(c) of the Commission's Rules of Practice and Procedure, it filed a petition for a declaratory order[6] in which it requested the Commission to

[6] In its amended and supplemental petition Deep South sought declaratory relief from the Commission with respect to a sale made from a single gas well in Refugio County, Texas. Subsequent to the hearing before the presiding examiner this well became exhausted, the equipment was dismantled and all deliveries of gas from the well discontinued. For that reason, Deep South withdrew

declare that petitioner's sales of natural gas to Texas Gas are not subject to regulation under the Natural Gas Act, 15 U. S. C. §§717-717w, and that petitioner is not a "natural-gas company" within the meaning of the Act or subject to the provisions of the Commission's Order No. 174-A.[7] This proceeding, Commission's Docket No. G-2952, was consolidated for the purposes of hearing with proceedings on two similar petitions filed by Shell Oil Company and Humble Oil & Refining Company, Commissioner's Docket Nos. G-4671 and G-5261, respectively. After a hearing and upon the facts of record, the presiding examiner decided that petitioners' sales of gas, and each of them, were sales in interstate commerce of natural gas for resale within the purview of the Natural Gas Act, and that by reasons of such sales, each of the petitioners was a "natural-gas company" subject to regulation under the provisions of the Act. Accordingly, petitioners' respective prayers for declaratory relief were denied.

Deep South, Shell, and Humble Oil thereupon filed exceptions to the decision of the presiding examiner and the Commission, after hearing oral argument thereon, issued on September 9, 1955, its Opinion No. 284 and accompanying order affirming the decision of the examiner for the reasons therein stated. In its opinion the Commission noticed the fact that these consolidated proceedings presented to it for the first time the question whether sales of natural gas made before the completion of "production and gathering" are exempt from the Natural Gas Act by

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its request for relief with respect to this well, the withdrawal being made at the time of the argument before the Commission. The Commission's opinion and order contain references to this well, but the questions relating to it are now moot and are not referred to in Deep South's petition for review or discussed in its brief.

[7] See *Magnolia Petroleum Company* v. *Federal Power Commission*, 5 Cir., 236 F. 2d 785, cert. denied 352 U. S. 968, for a discussion of Order No. 174-A.

reason of the exclusionary provision of Section 1(b) of the Act. In resolving this question the Commission rejected petitioners' claims that "casinghead gas" is not "natural gas" within the meaning of the Act, and expressly affirmed the examiner's conclusion that there is nothing in the Natural Gas Act which supports petitioners' assertion that regulation under the Act is confined to fuel gas which consists "almost entirely of methane and ethane." Likewise, the Commission concluded that there was no merit in the contention that the sales in question are for "manufacture" and not for "resale." And, on the basis of its finding that the entire movement of the gas from the producing wells through the processing plants to consumers in other states is an uninterrupted and continuous flow, the Commission determined that the gas which is sold by petitioners is sold "in interstate commerce." Finally, the Commission concluded that none of the sales is exempt from regulation under the Act for the reason that the exemptive language of Section 1(b) does not nullify the clear and specific grant of jurisdiction over "sales of natural gas in interstate commerce for resale." Thereafter and agreeable to the provisions of Section 19(a) of the Act, petitioners filed applications for rehearing of this order, which applications were on November 4, 1955, denied by order of the Commission. Whereupon, Deep South, Shell and Humble Oil, each filed a petition for review,[8] praying that the orders of September 9 and November 4, 1955, be set aside in their entirety and that this Court further determine and declare that petitioner is not a "natural-gas company" within the meaning of the Act and that its sales are not subject to the jurisdiction of the Commission.

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[8] Shell Oil Company's petition for review has been docketed as cause No. 15,900 and Humble Oil & Refining Company's petition has been docketed as cause No. 15,884. The three cases were consolidated for purposes of argument and submission by order of Court entered June 25, 1956, however, separate opinions and judgments will be filed and entered in each case.

In this review proceeding as in the proceeding which was had before the Commission, Deep South raises two issues. The first and principal point urged is that the sales made by it are not within the specific affirmative grant of jurisdiction to the Commission over sales "in" interstate commerce, for the reason that all of the relevant circumstances establish that they are "local" in character. We do not agree. In our opinion the statutory language, its legislative history and prior decisions of the Supreme Court compel a contrary conclusion. When the Act was passed in 1938, Congress declared the national policy in doing so as follows:

> "SECTION 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to Senate Resolution 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest."

In the hearings which were had before the House Committee on Interstate and Foreign Commerce prior to the adoption of the Act, Congress was fully informed as to the need for such regulation and among other considerations it was cognizant of the fact that the prices at which local distributing companies can sell gas are in very large part determined by the prices they are required to pay for the same to interstate pipeline companies. It was strongly urged to Congress that the public cannot be protected from exploitation in the prices charged for natural gas unless Government shall control not only the price charged by the

companies which deliver the gas to the consumer, but also the prices of all companies which cooperate in bringing the gas from the wells in the state of production to the ultimate consumer in the state of distribution.[9] The Committee reports on the bill which became the Natural Gas Act specifically stated that "sales for resale, or so-called wholesale sales in interstate commerce *(for example, sales by producing companies to distributing companies)* . . . have been considered [by the courts] to be *not local in character,* and even in the absence of Congressional action not subject to State regulation."[10] Accordingly, Congress provided in Section 1(b) of the Act the following:

> "*The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption . . . and to natural-gas companies engaged in such transportation or sale,* but shall not apply to any other transportation or sale of natural gas . . . or to the production or gathering of natural gas."

"Natural gas" is defined in Section 2(5) of the Act to mean "either natural gas unmixed, or any mixture of natural or artificial gas," and in Section 2(7) "interstate commerce" is defined as "commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States."

In numerous decisions, the Supreme Court has recognized that the Act was primarily designed to protect

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[9] Hearings before House Committee on Interstate and Foreign Commerce on H. R. 4008, 75th Cong., 1st Sess. p. 142.

[10] H. R. Rep. No. 709, 75th Cong., 1st Sess., 1-2; S. Rep. No. 1162, 75th Cong., 1st Sess., 1-2.

consumer interests against exploitation at the hands of private natural gas companies, and with particular reference to sales by independent producers the Court, in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U. S. 672, 682, said:

> ". . . we believe that the legislative history indicates a congressional intent to give the Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company."

And in emphasizing the purpose of the Natural Gas Act to protect consumers, the Court at page 685 observed that:

> "Regulation of the sales in interstate commerce for resale made by a so-called independent natural-gas producer is not essentially different from the regulation of such sales when made by an affiliate of an interstate pipeline company. In both cases, the rates charged may have a direct and substantial effect on the price paid by the ultimate consumers. Protection of consumers against exploitation at the hands of natural-gas companies was the primary aim of the Natural Gas Act. *Federal Power Commission* v. *Hope Natural Gas Co., supra*, at 610. Attempts to weaken this protection by amendatory legislation exempting independent natural-gas producers from federal regulation have repeatedly failed, and we refuse to achieve the same result by a strained interpretation of the existing statutory language."

Having in mind the obvious purpose of Congress which was to see that there was effective regulation of all interstate wholesale sales of natural gas, it would be an exceedingly

incongruous result if a statute so motivated and planned to bring about such regulation were construed so as to obtain the opposite result. To hold, as petitioner would have us do, that it may set up its own interests in complete freedom from regulation of the price of its wholesale sales would be to permit it, if it were so inclined, to engage in the very exploitation which the Act was designed to prevent. We cannot therefore subscribe to the view that the Act contemplates that petitioner or any other independent producer should be free of price regulation, if it is engaged in the sale in interstate commerce of natural gas for resale.

As to petitioner's claim that its sales are "local" in character, we think it plain that they are sales "in interstate commerce" for the obvious reason that the sale of gas originating in one state and its transmission and delivery to distributors in any other state constitutes interstate commerce. *Federal Power Commission* v. *Natural Gas Pipeline Company of America*, 315 U. S. 575, 582. *Cf. Federal Power Commission* v. *East Ohio Gas Co.*, 338 U. S. 464, 467. The fact that the sales are made at the wellhead is immaterial for the particular point at which the title and custody of the gas pass to the purchaser, without arresting its movement to the ultimate interstate destination, does not affect the essential interstate nature of the business. *Illinois Gas Co.* v. *Public Service Co.*, 314 U. S. 498, 503-504. Here, petitioner's own brief testifies eloquently to the continuous movement of the gas which it sells at the wellhead. Petitioner admits, as, of course, it must, "that there is a continuous flow of gas from the Deep South wells into the gathering system of Texas Gas; that the mass of gas of which the Deep South gas becomes a part moves continuously through the gathering system into a processing plant; that the movement through the processing plant is continuous; that there is a continuous movement of natural gas from the outlet of the processing plant to both interstate and intrastate destinations. . . ." Accord-

ingly, and in the light of all of the uncontroverted facts, we hold that when the gas was sold by petitioner it had commenced its journey in interstate commerce.

We are likewise no more impressed than was the Commission with the claim that petitioner's sales were made for "manufacture", not for "resale." This contention is made notwithstanding the fact that all of the parties to the contract between Deep South and Texas Gas fully understood that the gas was to be resold in wholesale quantities by the buyer. In the conduct of its business, petitioner sells its gas in bulk to Texas Gas. Texas Gas in turn and at the tailgate of its processing plant resells the gas which it purchases from the petitioner to an interstate transmission company for resale, as well as to intrastate customers. The inescapable fact here then is that at least some portion of the gas sold by petitioner is resold to consumers outside the State of Texas. Consequently, there can be no question that petitioner is making sales for resale within the meaning of the Act. Nor is it of significance that the gas in the course of its interstate transmission passes through Texas Gas' processing plant. The processing herein involved is not an interruption of the interstate journey and is not "manufacture." On the contrary, as noted above, the processing does not interrupt the continuous movement of the gas from the wellhead to consumer burner tips and is merely a part of the business of transporting and marketing gas in interstate commerce. *City of Detroit* v. *Federal Power Commission,* D. C. Cir., 230 F. 2d 810, 820, cert. denied 352 U. S. 829. *Cf. Cities Service Gas Co.* v. *Federal Power Commission,* 10 Cir., 155 F. 2d 694, cert. denied 329 U. S. 773.

Petitioner also insists that the casinghead gas which it sells is not "natural gas" within the meaning of the Act. For answer we deem it sufficient to say that there is nothing in the general language used in the definition of "natural gas," quoted above, which suggests that a

special or narrow or unnatural definition of "natural" was meant. Boone's Petroleum Dictionary (1952) defines natural gas as *a mixture of gaseous hydrocarbons found in nature* in many places connected with deposits of petroleum, to which the gaseous compounds are closely related. The record in this case shows that the principal constituents of natural gas which is used as a domestic or industrial fuel are methane and ethane; that casinghead gas contains methane and ethane, as well as other constituents that are valuable, such as propane, butane, and the heavier components that comprise natural gasoline; and that it is economically desirable to remove these additional components for their value. The gas sold by petitioner contains the methane and ethane which constitutes the bulk of fuel gas distributed to domestic, commercial and industrial consumers. And the extraction process to which the gas is subjected after delivery under the sales contract does not create or add to the product any amount of either of those components. Thus, it is plain that casinghead gas is not any the less "natural" gas because it contains variable amounts of other constituents.

The petitioner alternatively contends, however, that regardless of whether the sales in question are sales in interstate commerce, the transactions fall within the clause of Section 1(b) of the Act which specifically excepts from the Commission's jurisdiction the regulation of ". . . the production or gathering of natural gas." We do not at all agree, but on the contrary think that our observations in *Interstate Natural Gas Company* v. *Federal Power Commission*, 156 F. 2d 949, 951, supply a ready answer to this contention. There, in speaking of Section 1(b), we said:

> "[The Act] is very simply and plainly written. After stating what it shall apply to, it then states what it shall not apply to. Under familiar rules of construction a negation in or exception to a statute will be construed so as to avoid nullifying

> or restricting its apparent principal purpose and the positive provisions made to carry them out. . . . Here the statute was drawn to regulate, it picked out for inclusion 'sale in interstate commerce of natural gas for resale for ultimate public consumption.' . . . Unnecessarily perhaps but in the interest of making clear that the act gave jurisdiction only over sales and transportation of the kind described in it, it used language removing from any doubt that the Commission was not to have jurisdiction over properties used for production and local distribution or the activities of production and gathering. It did this by expressly providing that the act should not apply 'to the facilities used for such [i.e. local] distribution or to the production or gathering of Natural gas.' "

The exemption of production and gathering merely means that the physical activities, facilities and properties used by petitioner in the production and gathering of natural gas are not within the Commission's power of regulation. However, there is nothing in the Act which suggests, either expressly or by implication, that by the exemption of production and gathering, Congress intended that the wholesale sales of natural gas in interstate commerce which are consummated before the gas has been gathered or processed should not be regarded as sales in such commerce over which the Commission was granted exclusive jurisdiction to regulate.

Petitioner argues, however, that what is involved here is "more than merely regulation of sales," for the reason that our decision herein will give rise to certain hypothetical situations predicated upon assumed future actions by the Commission, viz., that should certificates of public convenience and necessity which petitioner will apply for be refused, Deep South must close its wells and suspend

operations, and that petitioner must obtain the Commission's permission before discontinuing sales from a well which has been found subject to Federal jurisdiction. No such issues are presented in the instant case, and it will be time enough to pass upon those issues if and when they are properly presented.

In the light of the foregoing it follows that the order of the Commission declaring Deep South Oil Company of Texas to be a "natural-gas company" within the meaning of the Natural Gas Act should be and the same hereby is affirmed.

AFFIRMED.

BROWN, Circuit Judge: I dissent for reasons hereafter to be filed.

IN THE

Supreme Court of the United States

October Term, 1957

No. 449

SHELL OIL COMPANY,

Petitioner,

v.

FEDERAL POWER COMMISSION,

Respondent.

ADDENDUM TO PETITION FOR WRIT OF CERTIORARI

Subsequent to the filing herein on September 11, 1957 of the Petition for a Writ of Certiorari, Petitioner received the following letter from the Clerk of the United States Court of Appeals for the Fifth Circuit, which is hereby added as an Addendum to the Appendix to the Petition filed herein:

UNITED STATES COURT OF APPEALS
Fifth Circuit
Office of the Clerk

Edward W. Wadsworth
Clerk

Post Office Box 23
New Orleans 6, La.

September 13, 1957

Gentlemen:

The Court has today corrected its opinion rendered on June 29, 1957 in re:

No. 15900. Shell Oil Company vs. Federal Power Commission.,

as follows:

On page 5, Line 9—delete all words except the first three, "by it and"; Line 10 through 15—delete all lines; Line 16— delete the words "phasis supplied.)"; and change the capital "T" in the word "Thus" to lower case.

As corrected, the last sentence of the next to last paragraph should read: "The record here clearly shows that the gas sold to Phillips is resold by it and thus, as in *Deep South*, there can be no question that petitioner is making sales in interstate commerce of natural gas for resale within the meaning of the Act."

Very truly yours,

(Sgd.) EDWARD E. WADSWORTH
EDWARD W. WADSWORTH
Clerk

The portion of the opinion to which the foregoing changes refer appears at lines 25-32, page 21, of the Petition for Writ of Certiorari filed herein.

Petitioner prays that this Addendum be filed as part of the Petition filed herein by it on September 11, 1957.

Respectfully submitted,

Attorney for Petitioner.

Certificate of Service

I certify that the foregoing Addendum to Petition for a Writ of Certiorari was served upon Respondent, the Federal Power Commission, by mailing a copy thereof, postage prepaid, to each of the following attorneys for Respondent on the 25th day of September, 1957:

J. Lee Rankin, Solicitor General
Department of Justice
Washington 25, D. C.

Willard W. Gatchell, General Counsel
Robert L. Russell, Attorney
William L. Ellis, Attorney
Federal Power Commission
441 G Street, N. W.
Washington 25, D. C.

William J. Barney
Attorney for Petitioner.

New York, New York,
September 25, 1957.

Office Sup...
OCT
JOHN T. FEY Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 449

SHELL OIL COMPANY,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI

REPLY OF SHELL OIL COMPANY TO BRIEF OF FEDERAL POWER COMMISSION

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*Attorney upon whom service is to be made

SORG PRINTING COMPANY OF TEXAS, HOUSTON, TEXAS

In The

Supreme Court of the United States

October Term, 1957

No. 449

Shell Oil Company,

Petitioner,

v.

Federal Power Commission,

Respondent.

On Petition for Writ of Certiorari

REPLY OF SHELL OIL COMPANY TO BRIEF OF FEDERAL POWER COMMISSION

The Commission's brief completely dodges the principal issue in this case. The Commission tries to cast into the background our primary contention that the sales involved here are not sales "in" interstate commerce and hence not within the affirmative coverage of the Act. The Commission tries to replace this primary contention with our completely secondary position that these sales are within the production and gathering exemption of the Act.

In thus attempting to choose a battleground of its own liking, the Commission concedes the strength of the forces amassed against it in the principal arena.

Our primary contention, as clearly stated in Paragraphs 3 and 11 of our Petition, is that the sales here involved are not within the affirmative coverage of the Act because they are not sales "in" interstate commerce. Only secondarily do we urge the sales to be within the production and gathering exemption.

It was the same before the Commission and before the Court of Appeals. In the *Deep South* case (Page 50 of the Petition), the Court stated the matter as follows:

> "The first and principal point urged is that the sales made by it are not within the specific affirmative grant of jurisdiction to the Commission over sales 'in' interstate commerce, for the reason that all of the relevant circumstances establish that they are 'local' in character."

In the *Shell Oil* case (Page 20 of Petition), the Court of Appeals said:

> "In this review proceeding, the basic contentions and the grounds asserted for setting aside the Commission's order are in essence identical to those urged by petitioner in the *Deep South* case . . . "

The Commission quotes at length from *Interstate Natural Gas Company* v. *Federal Power Commission*, 331 U. S. 681, as disposing of our contention that the sales are not in interstate commerce. In attempting to make the *Interstate* doctrine applicable here, the Commission attempts to treat the gathering and processing which intervene between Shell's sales and the subsequent sales into interstate commerce as being in the same category as the compression which the gas underwent in the *Interstate* case upon delivery to the purchasers. The Court is no doubt sufficiently familiar with the facts in that case not to be led into any

such erroneous analogy. There this Court, in connection with its finding that the movement of the gas "is a continuous process without interruption for storage, processing or for any other purpose", said in footnote 7:

> "Gas in the Monroe field is 'dry' gas and consequently is not subjected to any extraction processing."

This Court concluded that "by the time the sales (by Interstate) are consummated, nothing further in the gathering process remains to be done. We have held that these sales are in interstate commerce." The *these sales* referred to are sales made after the completion of gathering, thus indicating that sales made prior to gathering are not in interstate commerce. The Court also found that:

> "Long before the gas reaches the compressor pumps it has been committed to its interstate journey without interruption or deviation. Under such circumstances, the increase of pressure in the compressor stations must be regarded as merely an incident in the interstate commerce rather than as its origin."

When the *Interstate* case is considered in the light of this Court's decision seven years later in *Michigan-Wisconsin Pipe Line Company* v. *Calvert*, 347 U. S. 157, the true distinction becomes apparent. In the *Calvert* case, this Court had before it the essential factor which was missing in the *Interstate* case, namely, *processing*, followed by gathering. In *Calvert*, this Court reasoned that interstate commerce did not begin and the gas did not have its "taking off" into interstate commerce "until gathering and processing had ceased." When these two decisions are considered in the light of their respective facts, they establish the principle that when gas is gathered and undergoes processing before the residue gas enters the pipeline which is to take it out

of the State, this last occurrence marks the origin of interstate commerce. Sales consummated by delivery prior to that point, such as Shell's sales involved in this case, are sales in *intrastate* commerce and hence are not within the jurisdictional scope of the Act.

For the reasons herein and in the petition, Shell Oil Company prays that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

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By .....

Houston, Texas, October 23, 1957.

I certify that the foregoing Reply of Shell Oil Company to Brief of Federal Power Commission was served upon Respondent, the Federal Power Commission, by mailing a copy thereof, postage prepaid, to each of the following attorneys for Respondent on the 23rd day of October, 1957:

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 449

SHELL OIL COMPANY, PETITIONER

v.

FEDERAL POWER COMMISSION

No. 459

HUMBLE OIL & REFINING COMPANY, PETITIONER

v.

FEDERAL POWER COMMISSION

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE FEDERAL POWER COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinions of the Court of Appeals in the *Shell* case (S.[1] Pet. App. 18–44; H. Pet. App. 15a–19a) and

[1] "S. Pet. App." refers to the Appendix to the *Shell* petition and "H. Pet. App." to the Appendix to the *Humble* petition. In addition, since there is a consolidated record plus separate supplemental records in each case, C. R., S. R. and H. R. will be used to refer to the consolidated record, the *Shell* supplemental record, and the *Humble* supplemental record, respectively.

in the *Humble* case (H. Pet. App. 2a–3a, 20a–40a) are not yet reported.[2] The single opinion and order of the Federal Power Commission affirming the Examiner's decision in both cases is set out at H. Pet. App. 41a–75a.

JURISDICTION

The judgment of the Court of Appeals in each case was entered on June 29, 1957. The petition for a writ of certiorari in *Shell* was filed on September 11, 1957, and in *Humble* on September 13, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1) and Section 19 (b) of the Natural Gas Act, 15 U. S. C. 717r (b).

QUESTIONS PRESENTED

1. Whether sales of natural gas in interstate commerce for resale, made prior to the completion of gathering, are subject to regulation by the Federal Power Commission under the Natural Gas Act.

2. Whether, if the first question is answered in the affirmative, the sales made by petitioners in the particular circumstances of these cases constitute such regulable sales.

STATUTE INVOLVED

Section 1 (b) of the Natural Gas Act of June 21, 1938, 52 Stat. 821, 15 U. S. C. 717 (b), provides:

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[2] Also relevant here but not yet reported is the opinion of the Court of Appeals in *Deep South Oil Company of Texas* v. *Federal Power Commission*, which was decided with *Shell* and *Humble* and constitutes the principal opinion in the three cases. The majority opinion in *Deep South* is set out at S. Pet. App. 45–57 and at H. Pet. App. 3a–15a. Judge Brown wrote a single dissenting opinion in all three cases (S. Pet. App. 23–44; H. Pet. App. 19a–40a). A petition for a writ of certiorari has not been filed in the *Deep South* case.

(b) The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

STATEMENT

The Shell Oil Company on November 5, 1954, and Humble Oil & Refining Company on November 26, 1954, filed with the Federal Power Commission petitions, pursuant to Section 1.7 (c) of the Commission's Rules of Practice and Procedure, each praying for an order to remove uncertainty as to its status and declaring that its sales of gas as described in its petition are not subject to regulation under the Natural Gas Act and that it was, therefore, not a "natural-gas company" within the Act by virtue of such sales.[2a] These petitions were consolidated for hearing with the similar petition filed by Deep South Oil Company of Texas.

The Presiding Examiner, after extensive hearings, issued a single decision relating to all three companies in which he held that each of the companies, Shell,

[2a] Section 2 (6) of the Act defines "natural-gas company" as "a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale."

Humble and Deep South, was making sales of natural gas in interstate commerce for resale; that these sales, although consummated prior to the completion of gathering, were not exempt from Commission regulation by virtue of the exception contained in Section 1 (b) of the Gas Act for "the production or gathering of natural gas"; and consequently that each company was a "natural-gas company" subject to Commission regulation under the Act (C. R. 130–191). After considering the companies' exceptions and oral argument, the Commission affirmed the Presiding Examiner's decision (C. R. 340–357; H. Pet. App. 41a–54a). Each company sought review in the Court of Appeals for the Fifth Circuit and that court affirmed (S. Pet. App. 18–22; H. Pet. App. 2a–3a).

The pertinent facts may be summarized as follows:

Shell.—Shell Oil Company is engaged in the business of exploring for, producing, refining and marketing petroleum and petroleum products. In its Texas operations, Shell produces and sells casinghead gas,[3] at or near the wellhead, from nineteen oil wells in the McElroy Field and nine oil wells in the Nome field. It also sells "gas well gas" from one well in the latter field (C. R. 147–148, 151–152).

When the McElroy gas comes out of the wells, it goes into flow lines which connect to a single separator located on the Shell lease area (C. R. 148; S. R. 7). In the separator, the crude oil and free water are

[3] Casinghead gas is gas that is produced along with oil from an oil well. It may be either "solution gas" which is in solution in the oil in the reservoir or "cap gas" which overlies the oil producing horizon (C. R. 136).

separated from the gas, with the latter passing out of the top of the separator into a small vent line which connects with a 4-inch line of Phillips Petroleum Company, the purchaser of the gas, a few feet from the separator (S. R. I 7–8). At this point, which is still on Shell's lease, the gas is delivered, and title passes to Phillips pursuant to a contract entered into on May 7, 1936, between Phillips' and Shell's assignor under which Shell is to receive 50% of the net proceeds from the sale of the gas (S. R. I 8–10, II, Ex. 2).[4]

From the point of delivery by Shell, the gas flows through a small lateral line belonging to Phillips for a distance of about 1,500 feet, where it enters one of Phillips' main gathering lines (S. R. I 8). There, commingled with gas from other wells, the gas from Shell's wells flows to the inlet of Phillips' Crane Plant (S. R. I, 24; II, Exs. 1, 11).[5] At the Crane Plant, the commingled gas is first run through scrubbers to remove water and small amounts of crude oil; then it is compressed and sent through absorbers in which the liquefiable carbons are removed from the gas (S. R. I 25–26). While part of the gas which remains

[4] At the point of delivery, the gas contains methane, ethane, liquefiable hydrocarbons (natural gasoline, butane and propane) and an unusually large quantity of hydrogen sulfide (S. R. I 8–9). Methane and ethane are the principal constituents of natural gas as used for industrial or domestic fuel (C. R. 137).

[5] The Crane Plant of Phillips, which is about five or six miles from Shell's McElroy lease, is served by four main gathering lines which bring to the plant 33 to 34 million cubic feet of gas per day from 897 wells in the McElroy field. Of this amount, approximately 500,000 cubic feet a day comes from the Shell wells (C. R. 150; S. R. I 23, 24, 29).

after this processing is used for plant and lease fuel, the greater portion of it is delivered near the outlet side of the Crane plant to El Paso Natural Gas Company, a pipeline company, under a contract entered into between Phillips and El Paso in 1950 (S. R. I 26, 29).[6] El Paso then removes the hydrogen sulphide, carbon dioxide and remaining moisture, compresses the gas, and delivers it into one of its transmission lines for transportation to and resale in other states (S. R. I 26–27).

Shell sells its Nome gas to Texas Gas Pipe Line Corporation under a contract entered into on October 15, 1954 (S. R. II, Ex. 9). Shell delivers the casinghead gas at the outlet valve of its field separators and the gas well gas at the wellhead (S. R. I, 41, 44; II Ex. 8). The Pipe Line Corporation transmits the gas to its main gathering lines, where it is commingled with other gas and transmitted to the Winnie processing plant, owned by the Pipe Line Corporation's parent, in the Nome field (S. R. I 47–48). At the Winnie plant, the gas is processed for the removal of water vapor and liquefiable hydrocarbons and thereafter redelivered to the Pipe Line Corporation, which resells part in interstate commerce to Transcontinental Gas Pipe Line Company, and some for local use in Texas (S. R. I 46–47, II Ex. 6).

Humble.—Humble, an independent producer of natural gas in various fields in Texas and New Mexico,

[6] Prior to 1950, Phillips vented or flared the residue gas. It may be noted that the Phillips-El Paso sale is among those involved in *Phillips Petroleum Company* v. *Wisconsin*, 347 U. S. 672. See 10 F. P. C. 246, 260.

sells casinghead gas under forty-eight contracts. Thirty-six of these contracts are on a standard form of casinghead gas contract;[7] under these contracts, Humble sells gas to Phillips Petroleum Company and 12 other processors in 20 fields (in one New Mexico and fifteen Texas counties) and, in return, Humble receives a portion of the net proceeds from the processors' sales of the residue gas and of the liquefied products recovered and saved from the raw gas (C. R. 153–154; H. R. 21). Under eight of the remaining contracts (also on a standard form of casinghead gas contract, slightly amended),[8] Humble sells to El Paso Natural Gas Company, a natural-gas company under the Act, gas produced by it in Lea County, New Mexico, and in two counties in Texas; for this casinghead gas, the amount paid to Humble is related to the sales price of gasoline, as stated in the contract, plus certain flat prices for the residue gas (C. R. 154; H. R. 28–29). The remaining four sales of gas (one to Phillips Petroleum Company, two to the Texas Company, and one to Standard Oil and Gas Company) are in the Stowell and Hastings fields in Texas; these sales are made by Humble under what is described as "Division Orders"[9] under

[7] "Standard Form Revised-Adopted by the Natural Gasoline Association of America, November 7, 1932."

[8] "Standard Form 1939—an exact reproduction of the form formerly sponsored by the Natural Gasoline Association of America" (C. R. 154).

[9] A Division Order shows the division of ownership both as to the working and royalty interests and gives the lease operator the right to purchase the gas and use it or sell it to someone else for the account of the joint owners. It differs from a contract in that an order is subject to revocation at the will of the joint owners (C. R. 155).

which Humble receives payment for the gas on the same basis as the plant operator receives payment for his own casinghead gas (C. R. 154; H. R. 32).

Under each of these forty-eight contracts, Humble delivers gas at the outlet side of a separator, which is on or near the lease (H. R. 7; C. R. 154). In all but two instances, title to the gas passes to the purchaser at the separator; in the two instances, title passes on adjoining leases, not very far away (C. R. 154–155). In each instance, after the gas is delivered to the purchaser, it goes into a gathering system, where, commingled with gas from other wells, it moves to a processing plant for removal of impurities and the heavier liquefiable hydrocarbons (H. R. 10–12). From the processing plant, the gas may be returned to the lease for lease operations, or be sold for local or out-of-state use; in each instance, however, some or all of the gas is delivered to the lines of a pipeline company which transports it across state lines for resale and consumption (H. R. 23–26).

Decisions Below.—Before the Presiding Examiner, petitioners urged that their sales are excluded from regulation under the Natural Gas Act by virtue of Section 1 (b)'s exemption for the "production or gathering" of natural gas. They also claimed that the gas they sold the processing plant operators was not the same product as the residue gas later sold by the plant operators to the interstate pipeline company and, in any case, not "natural gas" as defined in the Act. In addition, they argued that their sales were not "sales for resale" but for manufacture, and

finally that their sales were not sales "in interstate commerce" (C. R. 157).

The Presiding Examiner, after hearing the evidence and considering briefs, held against petitioners on all counts. First, he ruled that under this Court's decision in *Phillips Petroleum Company* v. *Wisconsin,* 347 U. S. 672, sales of natural gas at the well-head, such as those made by petitioners, were not within the "production or gathering" exemption but rather within Section 1 (b)'s affirmative grant of jurisdiction over the "sale in interstate commerce of natural gas for resale" (C. R. 158–165). Second, pointing out that the gas sold by petitioners consisted largely of ethane and methane, which constituted the bulk of the fuel gas sold and used by the ultimate consumers—with the sole function of the processing being to extract and remove certain impurities and other hydrocarbons—the Presiding Examiner held that the gas sold by petitioners to the processing plant operators is "natural gas" under the Act (C. R. 165–170).

As for petitioners' claim that their sales were not for "resale," but for manufacture, the Presiding Examiner noted that, while the contracts do not expressly provide for the resale of the gas, they do not prohibit resale and the pricing formulae usually are geared to, and contemplate, resale of the gas (C. R. 170–179). Finally, the Presiding Examiner held that, on the facts, the flow of gas from the well-head through the processing plant into the interstate transmission lines was continuous and uninterrupted, and that, while some of the gas from the processing plants was

used or sold locally, substantial volumes were transported in interstate commerce. Accordingly, the Presiding Examiner ruled that petitioners' sales were in interstate commerce (C. R. 179–190).

The Commission affirmed the Presiding Examiner's opinion in all respects (C. R. 340–385). The Commission held that petitioners' gas was natural gas within the Act (C. R. 343–344); that, on the record, there was a continuous flow of natural gas from petitioners' wells across state lines, uninterrupted by processing in the processing plants (C. R. 344–348); that the sales were not for manufacture, but for resale (C. R. 349); and that consequently, under the *Phillips* case, petitioners' sales were not within the exemption of "production or gathering" but rather within Section 1 (b)'s affirmative grant of jurisdiction (C. R. 350–357).[10]

ARGUMENT

1. Petitioners' primary contention is that their sales of gas at or near the wellhead are not subject to regulation under the Natural Gas Act because these sales are made prior to the completion of production and gathering. According to petitioners, *Phillips Petroleum Co.* v. *Wisconsin,* 347 U. S. 672, does not hold to

[10] Commissioner Digby dissented in part, being unable to agree that "the Natural Gas Act applies to *all* sales of natural gas, whether to an interstate pipeline company or not, and whether occurring before, during, or after production or gathering has been completed, solely because some or all of the gas ultimately is transported in interstate commerce or sold in interstate commerce for resale by an interstate pipeline company." (C. R. 357–358.) He would hold Humble's sales and those by Shell from the McElroy field not subject to the Commission's jurisdiction (C. R. 373–380).

the contrary, since the sales involved there were made after the completion of production and gathering. Viewing the issue here as still at large, they undertake to show that, in enacting the Gas Act in 1938, Congress intended that such sales be exempt from federal regulation under Section 1 (b)'s exception for "the production or gathering of natural gas."

(*a*) But, as we read *Phillips,* this Court clearly ruled that *all* sales of natural gas in interstate commerce for resale are subject to Commission regulation under the Act. While the sales involved in *Phillips* happened to be made after the completion of gathering, the Court's decision did not turn on that fact. Rather, the Court based its ruling on the broader ground that the Act covered "all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company" (347 U. S. at 682).

That the *Phillips* holding was based on this broader ground is, we believe, manifest throughout the opinion. In discussing its earlier holding in *Interstate Natural Gas Co. v. Federal Power Commission,* 331 U. S. 682, where Interstate had produced or purchased natural gas which it in turn sold and delivered to three interstate pipeline companies, the Court not only reaffirmed its prior ruling that " '[e]xceptions to the primary grant of jurisdiction in the section [1(b)] are to be strictly construed' *id.,* at 690–691" (347 U. S. at 679), but it deliberately refused to distinguish *Interstate* on the proffered ground that that company "transported the gas in its pipelines after

completion of gathering and before sale, and that the Interstate Company was affiliated with an interstate pipeline company and therefore subject to Commission jurisdiction in any event" (347 U. S. at 680). In *Phillips,* the Court stated with respect to *Interstate* (*id.* at 680–681):

> * * * This Court, however, refused to rely on such refinements and instead based its decision in *Interstate* on the broader ground that sales in interstate commerce for resale by producers to interstate pipeline companies do not come within the "production or gathering" exception.

Similarly, in dealing with the Act's legislative history, the Court pointed out that wholesale sales generally, not merely those made after the completion of gathering or by pipeline companies, were within the "gap" which the Natural Gas Act was intended to plug (*id.* at 683–684):

> * * * A significant part of this gap was created by cases holding that "the regulation of wholesale rates of gas and electrical energy moving in interstate commerce is beyond the constitutional power of the States." *Interstate Natural Gas Co.* v. *Federal Power Commission, supra,* at 689. The committee reports on the bill that became the Natural Gas Act specifically referred to two of these cases and to the necessity of federal regulation to occupy the hiatus created by them. Thus, we are satisfied that Congress sought to regulate wholesales of natural gas occurring at both ends of the interstate transmission systems.

And, as if to remove any doubt, the Court concluded by recognizing that the effect of its holding would be

to subject to Commission regulation sales of natural gas in interstate commerce for resale by independent producers, such as petitioners' sales (*id.* at 685):

> Regulation of the sales in interstate commerce for resale made by a so-called independent natural-gas producer is not essentially different from regulation of such sales when made by an affiliate of an interstate pipeline company. In both cases, the rates charged may have a direct and substantial effect on the price paid by the ultimate consumers. Protection of consumers against exploitation at the hands of natural-gas companies was the primary aim of the Natural Gas Act. *Federal Power Commission* v. *Hope Natural Gas Co., supra,* at 610. Attempts to weaken this protection by amendatory legislation exempting independent natural-gas producers from federal regulation have repeatedly failed, and we refuse to achieve the same result by a strained interpretation of the existing statutory language.

See also *Natural Gas Pipeline Co.* v. *Panoma Corporation,* 349 U. S. 44, reversing, 271 P. 2d 354 (Okla.) and 272 P. 2d 425 (Okla.); *Northern Natural Gas Company* v. *Federal Power Commission,* 206 F. 2d 690 (C. A. 8), certiorari denied, 346 U. S. 922, rehearing denied, 347 U. S. 1022; cf. *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission of Indiana,* 332 U. S. 507, 513–517.[11]

[11] Contrary to Humble's contention, the holding below is not in conflict with *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U. S. 498 (H. Pet. 21). That case involved the question whether the Commission's jurisdiction under the Act extended to sales of *gas leases, i. e.*, properties containing natural gas still in the ground and not yet reduced

(*b*) That the Court has noted probable jurisdiction in *Cities Service Gas Company* v. *State Corporation Commission of Kansas*, 180 Kan. 454, No. 85, this Term, 353 U. S. 971, does not indicate that the Court should likewise grant the instant petitions. In *Cities Service*, the Kansas Supreme Court sustained an order of the Kansas Commission requiring all takers of gas from the Hugoton field in Kansas to attribute a value of 11 cents per Mcf. to the gas taken, regardless of where the initial sale is made (whether at the well-head or after the completion of production and gathering) or of the ultimate destination of the gas (local or out-of-state). Such a holding plainly ignores the rulings of this Court in *Phillips*, *supra*, and *Panoma*, *supra*. Here, on the other hand, the holding below is in full accord with this Court's prior decisions and there is no occasion for further review.

2. Similarly without merit and unworthy of review by this Court, are petitioners' subsidiary contentions (*a*) that their sales are not of "natural gas," (*b*) that they are not "in interstate commerce," and (*c*) that they were not for resale, but rather for manufacture.

(*a*) There can be little doubt that the gas sold by petitioner is "natural gas" within the meaning of the Natural Gas Act. Not only does the Act define

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to physical possession. The Court, in holding that such gas-producing properties were excluded from Commission regulation under the exemption for "the production or gathering of natural gas," did not, as Humble impliedly recognizes (H. Pet. 12), undertake to pass on the very different question involved here, *i. e.*, whether sales of natural gas in interstate commerce for resale, after the gas has been taken out of the ground and reduced to physical possession, are subject to the Act.

"natural gas" broadly as meaning "either natural gas unmixed, or any mixture of natural gas and artificial gas" (Section 2(5)), but there is no sharp line of distinction in theory or practice between casinghead gas and natural gas; indeed, the term "natural gas" is frequently used generically to include casinghead gas.[12] The only difference between casinghead gas, as it comes out of the well, and natural gas, as it is transmitted in interstate commerce, is that the former contains, in addition to methane and ethane which constitutes the bulk of the transmitted natural gas, other and heavier hydrocarbons as well as impurities. The removal of these does not operate to change the gas into something new and different; the gas as it comes from the well is natural gas, and remains such through processing and delivery to the ultimate consumers. Cf. *Natural Gas Pipe Line Co. of America* v. *Panoma Corp.*, 271 P. 2d 354, 361 (Okla.),[13] reversed on other

[12] "Natural gas" is defined in Webster's *New International Dictionary*, 2d Ed. (unabridged) as:

> A gas issuing from the earth's crust through natural openings or bored wells and frequently accompanied by petroleum. * * * When combustible its consists chiefly of methane with small and variable amounts of ethane, propane, butane, hydrogen, oxides of carbon, nitrogen, helium, hydrogen sulphide, etc. * * *

[13] The Oklahoma Supreme Court commented in regard to a comparable contention (271 P. 2d at 361):

> There was some contention on the part of Natural that it did not take "natural gas" from the structures and formations of the Guymon-Hugoton field because the gas it finally took and paid for was not in fact "natural gas." This contention was based on the facts above set out. No authority is cited to sustain the conclusion that natural gas produced from the earth and transported to consumers who

grounds, 349 U. S. 44; *Mississippi River Fuel Corp.* v. *Federal Power Commission,* 121 F. 2d 159, 164 (C. A. 8); *Carbide & Carbon Chemicals Corp.* v. *Texas Co.,* 21 F. 2d 199, 201 (S. D. Tex.), affirmed, 31 F. 2d 32 (C. A. 5).

(*b*) Petitioners' claim that their sales are not in interstate commerce is largely disposed of by this Court's opinion in *Interstate Natural Gas Co.* v. *Federal Power Commission,* 331 U. S. 682. There, in rejecting a similar contention, *i. e.,* that certain sales by Interstate were not in interstate commerce, the Court said (331 U. S. at 684–685):

> The issue of this case involves the jurisdiction of the Federal Power Commission to regulate sales made in the field by petitioner to three pipe-line companies, each of which transports the gas so purchased to markets in States other than Louisiana. Gas produced from petitioner's wells flows into petitioner's system of field pipe lines, moving first into branch lines, then into trunk lines, and finally into the main trunk lines from which delivery is made to the three purchasing companies. During the course of this movement petitioner purchases gas from other producers in the field which gas is introduced into petitioner's system at designated points and is there commingled with the gas moving from petitioner's own wells. By far the larger part of the gas so purchased by petitioner has been gathered from

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use and burn it as such, is changed into something different because of the fact that after it is taken from the well it is cleaned up and processed before final delivery to the ultimate consumer. * * *

> various wells of the selling companies before delivery to petitioner is made. The gas moves through petitioner's system at well pressure. Shortly after the sales in question are completed, the gas is directed through the compressor stations of the purchasing companies and is there subjected to increased pressure in order that it may be moved to markets as far distant as Illinois. The entire movement of the gas from the wells to the purchasing companies through the compressor pumps and across the state lines is a continuous process without interruption for storage, processing or for any other purpose. All the gas sold in these transactions is destined for ultimate public consumption in States other than Louisiana.

See, also, *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U. S. 157, 163.[14]

The fact that here the gas was processed before sale and delivery to an interstate pipeline company does not operate to remove the gas or the sale from interstate commerce. The processing of the gas, by passing it through several facilities for the removal of impurities and heavier hydrocarbons without stoppage, is not a manufacturing operation (cf. *East Texas Motor Freight Lines, Inc.* v. *Frozen Food*

[14] Shell's suggestion that, under *Calvert*, its sales were not in interstate commerce (S. Pet. 14–15) is predicated on a misreading of that decision. *Calvert* involved the validity under the Commerce Clause of a state tax on sales of natural gas made to pipeline companies after the completion of production and gathering; consequently, the case presented no issue of whether the sales were "in" interstate commerce *vel non;* rather, interstate movement was accepted as a basic premise, with the ultimate problem for resolution being whether the tax had such an incidence as to burden interstate commerce unduly.

Express, 351 U. S. 49, 52–54), nor is it, whatever it be termed, an interruption of the stream of commerce. Since, as already indicated, the methane and ethane components of the gas at the processing plant outlet are the same as those which entered the plant, without change in substance, the processing of gas is undertaken only to facilitate transmission and use. As such, far from constituting an interruption of the interstate flow, it is an "essential part of the business of transporting and marketing the natural gas" (*Cities Service Gas Co.* v. *Federal Power Commission,* 155 F. 2d 694, 703 (C. A. 10), certiorari denied, 329 U. S. 773), an "incident to the over-all pipeline transmission and resale operations" (*City of Detroit, Michigan* v. *Federal Power Commission,* 230 F. 2d 810, 820 (C. A. D. C.), certiorari denied, 352 U. S. 829).[15] Moreover, since it is established that, for the purposes of federal regulation, interstate commerce is not interrupted even where there is a stoppage for processing (see *Mandeville Island Farms, Inc.* v. *American Crystal Sugar Co.,* 334 U. S. 219, 238; *Parker* v. *Brown,* 317 U. S. 341; *Cloverleaf Butter Co.* v. *Patterson,* 315 U. S. 148; *Stafford* v. *Wallace,* 258, U. S.

[15] There is nothing new or unusual about the processing of natural gas. Most interstate natural gas pipeline companies process natural gas in connection with the transportation or sale thereof in interstate commerce, either for the profit involved in the extraction of by-products or to make the gas marketable and salable. For example, see *United-Fuel Gas Co.* v. *Railroad Commission,* 278 U. S. 300; *Federal Power Commission* v. *Colorado Interstate Gas Co.,* 348 U. S. 492;; and cases cited in *City of Detroit, Michigan* v. *Federal Power Commission, supra* at pp. 819, 820.

495, 514–516), it follows *a fortiori,* that where, as here, the processing does not involve any stoppage, the interstate movement is not interrupted.

(*c*) Finally, there is no substance to petitioners' claim that their sales are for manufacture, not for resale. Apart from the facts already mentioned—that there is no "manufacturing" involved in processing and that the processing itself is an integral part of the interstate transmission—it is clear that, notwithstanding the formulation of purposes set out in the contracts, petitioners' sales were made for the purposes of resale. The operators of the processing plants to which petitioners sold the gas were in the business of selling the salable products resulting from the processing; and the contracts themselves contemplated resale, as is evident from the fact that prices which petitioners received for their gas from the processing plant operators were in most instances tied to the proceeds which the latter received from their resales. See *supra,* pp. 5, 6-8. Thus, if the gas and the other materials separated from the gas in processing were not in fact resold, petitioners in many instances would receive little, if anything, for their efforts.[16]

CONCLUSION

For the foregoing reasons, it is submitted that these petitions for writs of certiorari should be denied.

[16] It is immaterial that the contracts did not in express terms provide for resale; "an express agreement or an intention on the Company's part that the energy shall be resold is [not] required in order to confer jurisdiction." *California Electric Power Co.* v. *Federal Power Commission,* 199 F. 2d 206, 209 (C. A. 9), certiorari denied, 345 U. S. 934.

However, we note the pendency of *Cities Service Gas Company* v. *State Corporation Commission of Kansas*, No. 85, which we believe should be reversed.

Respectfully submitted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 459

HUMBLE OIL & REFINING COMPANY,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE

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OCTOBER TERM, 1957

No.

HUMBLE OIL & REFINING COMPANY,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Humble Oil & Refining Company, a Texas corporation, prays that a writ of *certiorari* issue to review a judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The majority and dissenting opinions in the Court of appeals, printed App.[1] 2a, 19a, have not been reported.

---

[1] "App." refers to the Appendix to this Petition. The lower Court's opinion in this case is brief and refers to companion decisions handed down the same day in *Deep South Oil Company of Texas* v. *Federal Power Commission*, No. 15,849, and *Shell Oil Company* v. *Federal Power Commission*, No. 15,900, as being dispositive of this case; therefore, the opinions in *Deep South* and *Shell* are also set forth in the Appendix hereto.

The majority and dissenting opinions of the Federal Power Commission (App. 41a, 54a), along with the opinion of the presiding Examiner who originally heard the case prior to appeal to the Commission and to the Court of Appeals, are set forth in the Transcript of Record (R. 340-357; 357-385; 130-191).

JURISDICTION

This case involves review of a judgment of the Court of Appeals for the Fifth Circuit and jurisdiction of this Court is invoked under 28 U. S. C. 1254(1) and § 19(b) of the Natural Gas Act, 15 U. S. C. 717r(b).

DATE OF JUDGMENT BELOW

The judgment of the Court of Appeals was dated June 29, 1957, and entered on that same date (App. 1a).

QUESTION PRESENTED

Does the Federal Power Commission's jurisdiction over "sales in interstate commerce of natural gas for resale" include sales of raw casinghead gas, unsuitable for transportation in high-pressure lines and unfit for public consumption, to plant owners in the same state for processing, when such sales are made at the separators near the wellheads and prior to completion of "production or gathering" as those terms are used in § 1(b) of the Natural Gas Act, when the gas so sold is commingled with casinghead gas purchased from others before being gathered to a central point for processing, and when, after alteration in form and substance through processing, the residue gas *may*, in whole or in part, move in interstate commerce?

STATUTORY PROVISION INVOLVED

This case involves the Natural Gas Act, June 21, 1938, as amended, 52 Stat. 821-833, 15 U. S. C. Sections 717-717w. Pertinent provisions of the Statute are set forth in the Appendix page 76a.

STATEMENT OF THE CASE

This case arose before the Commission when, on November 26, 1954, Humble Oil & Refining Company filed a "Petition for Declaratory Order to Remove Uncertainties Concerning Sales of Casinghead Gas at or Near the Well Arising From the Issuance of Order No. 174-A and For Declaration of Status" (R. 431-449). Such Petition was filed pursuant to § 1.7(c) of the Commission's Rules of Practice and Procedure [18 C. F. R. 1.7(c)] and pursuant to § 5(d) of the Administrative Procedure Act.[2] Proceedings on such Petition were consolidated by the Commission for purposes of hearing with proceedings on similar petitions filed by the Deep South Oil Company of Texas and by Shell Oil Company. Hearings were held on the consolidated proceedings commencing on November 29, 1954, continuing through December 2, 1954, and resuming and concluding on January 10, 1955.

Casinghead gas is a gaseous substance inevitably produced along with oil from oil wells (App. below 4).[3] It always contains one or more impurities, such as carbon dioxide, nitrogen, helium, water vapor, free water, drilling mud, rust, sand, dirt, and various sulphur components, as well as valuable liquefiable con-

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[2] 60 Stat. 239 (1946), 5 U. S. C. 1004(d) 1952).

[3] "App. below" refers to the Appendix to Petitioner's Brief filed in the Court below and certified by the Clerk of the lower Court as a part of the record in this case.

stituents such as ethane, propane, butane, pentane, and heavier components including natural gasoline (App. below 4-5). Methane is the principal constituent of natural gas which is used as a domestic or industrial fuel and, accordingly, both the impurities and the valuable liquefiable constituents must first be removed from casinghead gas to produce residue or natural gas suitable for transmission and consumption (App. below 5).

Humble's request for status determination comprehended 48 contracts under which casinghead gas is sold by Humble wholly within the fields where processing in plants owned by others in or near such fields and constructed for such processing. Such contracts involve sales in many different oil fields and fall into three groups (App. below 25-61, 30):

1. In the first group are 36 casinghead gas contracts in which Humble is seller and the operator of a processing plant is buyer (App. below 26, 41-45), the same being written upon a form of casinghead gas contract entitled "Standard Form Revised—Adopted by The Natural Gasoline Association of America November 7, 1932," or upon "Standard Form 1939—Formerly Sponsored by The Natural Gasoline Association of America" or upon forms of contract substantially similar thereto.

2. In the second group are 8 contracts for the sale of casinghead gas to El Paso Natural Gas Company upon a form referred to as the "El Paso Form" (App. below 26, 45-46), such form being the Standard Form 1939 referred to above with a special clause relating to the payment for residue gas.

3. In the third group there are 4 sales of casinghead gas under contractual instruments referred to as Gas Division Orders (App. below 26, 46).

Under the "Standard Form" (App. below 49-69), the lease operator contracts to sell and deliver to the plant operator the raw casinghead gas available from the lease, with provision being made for return to the seller of sufficient residue gas to permit lease operations. The sales of raw casinghead gas are for processing (App. below 21-22). The point of delivery and at which title passes is the outlet of the lease separator, usually located on the lease (App. below 21). As consideration for the raw casinghead gas, the processing plant operator pays the lease operator: (a) an amount which is determined by what the plant operator receives from his sale of the liquid products recovered and sold, plus (b) a portion of the net proceeds received by the plant operator from his sale of whatever volume of residue gas remains after lease and plant uses (App. below 21). The amount of the consideration thus depends upon the price at which the plant owner makes his sale of the residue gas to whatever customer he may have, upon the richness of the casinghead gas, and, in some cases, upon the total volume of casinghead gas processed at the plant (App. below 21). The lease owner has no voice in the disposition of the residue gas, and the plant owner is not required to advise him as to how or to whom the gas is sold (App. below 22).

The "El Paso Form" (App. below 70-88) is substantially the same as the "Standard Form", the only basic difference being that under the "El Paso Form" the plant operator is required to account to the lease operator for all of the residue gas upon the basis of

certain prices set forth therein, such prices for the residue gas varying with the depth from which produced and the time period during which it is sold (App. below 28-29).

Sales of casinghead gas under the "Gas Division Orders" provide that the lease operator shall receive payment for his gas on the same basis that the plant operator receives payment for his own casinghead gas (App. below 32). As in the case of the "Standard" and "El Paso" forms, delivery of casinghead gas under the "Gas Division Order" is made at the outlet of the separator on the lease, and the seller has no control over the buyer's sale of residue gas (App. below 32-33). The seller, however, can terminate the gas division order at any time (App. below 33).

As pointed out above, under none of the contracts does Humble have control over the buyer's position of the gas. It was not until after deliveries had commenced under the contracts that Humble, in some instances only upon inquiry shortly prior to initiation of these proceedings, learned that some of the residue gas, commingled with the gas of other producers, was possibly being sold by the buyer to an interstate transmission line (App. below 31-32). In its Opinion, the Commission recognized this to be a fact (App. 42a). The record is devoid of any evidence that, at the time the sales were negotiated, either the seller or the buyer intended or knew that any of the gas would ultimately find its way into interstate commerce.

The record is replete with evidence describing the complex operations entailed in the processing of casinghead gas. Under typical operations, raw casinghead gas moves with the oil out of the wellhead through flow lines to a central point, usually on the

lease, and in a few instances on adjoining leases, at which are located lease stock tanks and separators wherein the crude oil is separated from the casinghead gas (App. below 7). The casinghead gas then moves out of the upper part of the separator, through a meter and, if it is not flared or burned, passes through a plant gathering system into the casinghead gas processing plant (App. below 7-8). Within the plant, the casinghead gas so gathered, commingled with casinghead gas from other leases, passes through a plant inlet meter to a scrubber where condensed liquids, certain impurities and other materials, including water, are removed (App. below 10). The casinghead gas thereafter passes out of the top of the scrubber through a set of compressors which increase pressure substantially and thence moves into the lower side of an absorber (App. below 11-12). The gas passes upward in the absorber counter-current to absorption oil, which is injected into the top portion of the absorber and which serves as a medium to remove the liquefiable constituents (App. below 12).

The stripped gas, from which the liquids and impurities have been removed, passes out of the top of the absorber as residue gas, (App. below 12). From this point, the residue gas may be returned to the lease for lease operations, or for repressuring the reservoir, or may be sold for local use, or may be delivered into the gathering lines of an interstate transmission company (App. below 12-12). In the latter event, or if the gas is to be moved any substantial distance or is to encounter low temperatures, it is necessary that it be further dehydrated. All of the residue gas produced in the plant is normally metered, regardless of its disposition (App. below 13).

After the conclusion of hearings on Humble's petition and others with which it was consolidated, the Presiding Examiner, on April 5, 1955, issued his decision in the consolidated proceedings (R. 130-191). Thereafter, an appeal was taken to the Commission, and on September 9, 1955, the Commission issued its Order and Opinion No. 284 (App. 41a; R. 339-357). Commissioner Digby filed a separate statement dissenting in part and concurring in part (App. 54a; R. 357-385). Both the Presiding Examiner and the Commission rejected the four contentions asserted by Humble, which were as follows:

> "1. The sales of casinghead gas are not in interstate commerce.
>
> "2. The sales involved are not for resale but are sales for processing.
>
> "3. The casinghead gas sold by petitioner is not the same product as the surplus residue gas which is sold by the buyer after intervention of processing.
>
> "4. The sales of casinghead gas and all facilities used in consummating such sales are within the production and gathering exemption of § 1(b) of the Natural Gas Act."

In short, the Commission held that the sales of raw casinghead gas were sales of "natural gas" as defined in the Act, that they were sales in interstate commerce for resale, and that the exemption of "production or gathering" under § 1(b) of the Act is not applicable to a sale even though admittedly made prior to completion of "production or gathering."

Thereafter, on October 4, 1955, Petitioner timely filed with the Commission its Application for Rehearing (R. 386-401) which was denied on November 4,

1955 (R. 425-426). Petitioner then, on December 19, 1955, sought review of the Commission's decision by the United States Court of Appeals for the Fifth Circuit, under provisions of § 19(b) of the Natural Gas Act (Petition for Review is a part of record in Court below).

As pointed out above, a two-judge majority of the Court below, Judge Brown dissenting, affirmed the order of the Commission on June 29, 1957. Such majority decision is sweeping in its effect. Any and all sales of a substance which includes natural gas would be rendered subject to regulation if any of the processed residue gas *may* eventually find its way into interstate commerce.

REASONS FOR GRANTING THE WRIT

I.

DECISION BELOW RAISES IMPORTANT QUESTIONS OF FEDERAL LAW WHICH HAVE NOT BEEN, BUT SHOULD BE, SETTLED BY THE SUPREME COURT

The questions presented here have not been previously adjudicated by this Court or any Court of Appeals other than the Court below. For the first time a fact situation is before this Court where a producer's sales of raw casinghead gas occur before the gas reaches a processing plant and before production and gathering have been completed. There are other facts surrounding the sales here involved which bring the novel issues into an even sharper focus. These accentuating facts will be developed below.

Before delineating the issues raised here, perhaps we should first define the area from which they arise, demonstrate their importance, and show that they have not been settled.

The only producer case under the Natural Gas Act which this Court has reviewed is *Phillips Petroleum Company* v. *State of Wisconsin*, 347 U. S. 672 (1954). That case involved no wellhead sale of raw casinghead gas, but a sale of residue gas consummated after processing, a few hundred feet beyond the outlet of the processing plant. This Court specifically observed "that production and gathering, in the sense those terms are used in § 1(b), end before the sales by Phillips occur" (347 U. S. at 678). Here, the sales are made at the field separators and undisputedly are consummated before completion of "production" and prior to the commencement of "gathering." Both the Commission and the Court below so found this to be the case.[4]

Another difference in facts between *Phillips* and this case was also noted by Justice Minton in the former case:

> "Petitioners admit that Phillips engages in 'the sale in interstate commerce of natural gas for resale', as, of course, they must" (347 U. S. at 677).

Here, we deny (1) that the sales are in interstate commerce, (2) that they are sales of "natural gas", and (3) that they are for "resale."

In two other situations, this Court has applied the principle which it employed in *Phillips* in drawing the line between state and federal jurisdiction to regulate rates of natural gas sold in interstate commerce for resale. In both situations, the sales were, as in *Phillips*, expressly found to be made after completion of "production" and "gathering."

---

[4] *Deep South* Opinion, App. 7a.

The first situation involved sales by one pipeline of gas-well gas which it produced to another interstate pipeline transmission company, without interruption of the flow for processing, and with knowledge and intent on the part of the seller at the time of the sale that the gas would move in interstate commerce and be resold. *Interstate Natural Gas Co.* v. *Federal Power Commission,* 331 U. S. 682 (1947). There, field sales of gas-well gas by Interstate to three interstate pipeline companies, each of which thereafter transported the gas in interstate commerce for resale, were held to be subject to regulation under the Natural Gas Act. But Mr. Chief Justice Vinson, speaking for the Court, carefully pointed out that "By the time the sales are consummated, nothing further in the gathering process remains to be done" (331 U. S. at 692).

The second situation is found in two cases, one decided before and the other after *Phillips: Michigan-Wisconsin Pipe Line Co.* v. *Calvert,* 347 U. S. 157 (1954), and *Natural Gas Pipeline Company of America* v. *Panoma Corporation,* 349 U. S. 44 (1955). These cases respectively involved attempts by the State of Texas to impose a "gathering" tax and by the State of Oklahoma to set a minimum price on gas, both attempts coming *after* the completion of production, gathering, *and processing,* and as the gas entered an interstate transmission line for resale in another state. The efforts of the two States were held invalid as invasions of federal jurisdiction over interstate commerce.

Thus, we see that the reach of federal jurisdiction over sales of natural gas in interstate commerce has never been held to extend to sales made on the well-

side of the processing plant, and prior to the completion of production and gathering.

On the other side of the jurisdictional line of demarcation, we find one instance of a denial by this Court of federal jurisdiction over a sale by an admitted "natural gas company", made prior to processing and within "production or gathering" as exempted by § 1(b) of the Act. This was *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U. S. 498 (1949), where a sale of leases, which is a sale of gas in place, was held to be a local transaction beyond the reach of the Commission's jurisdiction, although the leases were a part of the company's rate base and dedicated as a source of supply for, and made the basis of, certification of additional pipeline facilities. This decision was handed down notwithstanding the vigorous contention by the Commission that, unless the sale were held to be jurisdictional, that body could not effectively protect consumers against excessive rates nor assure them an adequate supply of gas. However, this Court respected the clear congressional intent as expressed by the exemption of production and gathering in § 1(b).

The unadjudicated no-man's land—out of which has grown, and may continue to grow, myriads of frustrating questions—lies then between sales of gas in place under dedicated leases, on the one hand, and sales made at the outlet side of processing plants, on the other. The blanket thesis of the Court below would extend the arm of federal control backward through the plant, through the gathering line, past the wellhead, down the well bore, and presumably even into the fugacious migration of gas molecules in the reservoir. This is not idle conjecture; it is an alarm

sounded in Judge Brown's dissenting opinion and also in Commisisoner Digby's dissent.

We turn now to the important and undecided questions raised by this case. There are a number of questions subsidiary to the question presented in the Court below and stated *supra*, page 2, namely:

(1) Does a "sale in interstate commerce" include a sale of raw casinghead gas to an intrastate processing plant where gas of many producers is gathered and processed, and a portion of the commingled residue *may*, at the election of the plant owner, be sold in interstate commerce?

(2) Is a sale of raw casinghead gas *for processing* a sale "for resale" when the seller has no control over the plant owner's disposition of the residue and a portion of the residue gas *may* ultimately find its way into interstate commerce?

(3) Is raw casinghead gas, unsuitable for high pressure transmission or for consumption, "natural gas" as that term is used and intended in the Act?

(4) Is the "production or gathering" exemption of § 1(b) of the Act applicable only to physical activities, facilities and properties used in production or gathering, to the complete exclusion of any and all sales made before interstate transmission commences?

(5) Do not knowledge and intent of the parties to a sale respecting the use to which the commodity will be put, or where it will go, have influential bearing on the question of local or interstate character of the transaction?

(6) Is it possible to construe the Act's use of "sale in interstate commerce for resale" to mean a sale for resale in interstate commerce?

The sweep of the decision below far exceeds the limits of the foregoing issues and hands down an expansive affirmative answer to the following broad question:

> Can it be said that any and all sales of a mineral product containing ethane and methane, regardless of the purpose for which made and regardless of interruptions in flow which may intervene, are to be regulated by the Commission if any molecule of the gas may eventually find its way into interstate commerce?

In the Court below we urged—as we contend here—that the clear language of the Natural Gas Act, together with its legislative history, reveal the intent of Congress to exclude from coverage of the Act local sales of the type here involved and to include only sales "in" interstate commerce. Morover, decisions of this Court dealing with analagous situations in other industries, we believe, require a holding here that these sales are local and intrastate in character and subject to state control. The basic principles were exhibited early and have long been followed. *Coe* v. *Errol,* 116 U. S. 517 (1886); *Oliver Iron Mining Co.* v. *Lord,* 262 U. S. 172 (1923). Even a certainty of exportation out of state of residue gas after processing will not alone suffice to classify the sales of raw casinghead gas as sales "in" interstate commerce. *Heisler* v. *Thomas Colliery Co.,* 260 U. S. 245 (1922); *Hope Natural Gas Co.* v. *Hall,* 274 U. S. 284 (1927); *United States* v. *Yellow Cab Co.,* 332 U. S. 218 (1947); *Empresa Siderurgica, S. A.* v. *County of Merced,* 337 U. S. 154 (1949). In classifying a disputed sale, this Court has attached significance to the seller's knowledge and intent regarding the later movement of the commodity. *Superior Oil Co.* v. *Mississippi,* 280 U. S.

390 (1930). Most importantly, the fact that the sales here are sales for processing forbids their inclusion under § 1(b) as sales "in" interstate commerce. *Kidd* v. *Pearson*, 128 U. S. 1 (1888); *United States* v. *E. C. Knight Co.*, 156 U. S. 1 (1895); *Crescent Cotton Oil Co.*, v. *Mississippi*, 257 U. S. 129 (1921); *Chassaniol* v. *City of Greenwood*, 291 U. S. 584 (1934); *Parker* v. *Brown*, 317 U. S. 341 (1943).

The foregoing paragraph suggests the background against which we think the transactions here must be appraised.

No doubt Respondent will contend, as it did in the Court below, that the questions set forth above have been settled by the following language from *Phillips*, often quoted to support efforts to extend regulation to all producer sales:

> ". . . [W]e believe that the legislative history indicates a congressional intent to give the Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company" (337 U. S. at 682).

But on the facts in *Phillips* this can mean only that a sale of *residue* gas, at the outlet of a processing plant, occurring *before* interstate transmission but *after* completion of production and gathering, is subject to regulation. Such is not the sale here presented, and the language cannot be twisted to cover such a sale occurring prior to processing and before production and gathering have been completed.

Before *Phillips*, the opinion prevailed generally in the industry and in the Commission itself that pro-

ducers, as such, were not subject to regulation under the Act. Indeed, Phillips contended that the Act was intended to apply only to interstate pipeline companies (347 U. S. at 681-682). The Commission had found that Phillips was not a "natural-gas company" as that term is used in the Act (347 U. S. at 675-676). The basic question in *Phillips*, then, was whether a producer, admittedly making a sale in interstate commerce for resale, which sale was expressly found by this Court to have been made after production and gathering had ended, was subject to regulation under the Act. In that case of first impression this Court held a producer to be regulable if, after completion of production, gathering and processing, he makes a sale in interstate commerce for resale. That case, however, plainly did not reach the issues posed here.

In *Panhandle Eastern*, *supra*, the Court granted *certiorari* in order to "consider the important question of the applicability of the Natural Gas Act" to a sale of dedicated gas leases (337 U. S. at 502). The question of the Act's applicability to a local sale of raw casinghead gas for processing, concededly made before completion of "production or gathering", involves even more important questions, and these questions have been multiplied and magnified by the broad sweep of the lower Court's decision.

II.

CASE INVOLVES MATTERS VITAL TO THE PUBLIC INTEREST

There are several aspects of the public interest readily apparent in this case. For example, consider the economic consequences of regulation upon the producing segment of the industry, in addition to the burden on and expense to the producers, large and small, to comply with the Commission's regulations in

filings and hearings.[5] Another aspect is presented by extension of federal control into areas where states have traditionally exercised jurisdiction to tax for support of local government and to regulate for purposes of conservation.[6] Still another feature is the tremendous administrative workload which regulation of thousands of producers and multiplied thousands of sales of the type here involved would impose on an already overloaded Federal Power Commission.[7]

Respondent will doubtless contend that these aspects of the public interest are overshadowed by the need for protection of consumer interests against excessive gas rates. We agree that reasonable rates, not only to protect the consumer but also to provide the incentive to the producing segment of the industry to assure an adequate supply, are a prime matter of public interest. But even this will not justify assertion of jurisdiction over a transaction to which the Act was not intended to apply, as in *Panhandle Eastern, supra.*

Even where the Natural Gas Act is applicable to a transaction, as in *Phillips* or *Interstate, supra*, there

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[5] U. S. Department of the Interior, Bureau of Mines, reports that in 1955 a total of 11,720 billion cu. ft. of gas were produced in the U. S. Of this total, 3878 billion cu. ft. or 33.1% was gas produced from oil wells, *i.e.*, casinghead gas ("Mineral Industry Surveys, Mineral Market Report MMS No. 2577", p. 5).

[6] The State of Texas filed in the Court below its Brief *Amici Curiae* in which it vigorously protested extension of federal regulation to the sales here involved. Grounds of the protest were (1) denial of the State's right to tax production, gathering and processing, (2) serious interference with State's conservation laws and programs and (3) reduction of State's revenues from royalties on State lands and from taxes on gas.

[7] Thirty-sixth Annual Report of the Federal Power Commission, 1956, particularly pp. 1-2, 5-6, 79-80, 85-88.

has been considerable debate over what should be the appropriate standard of rate making. This debate has continued over the years in the courts,[8] the Congress[9] and the Commission.[10] The gas industry participants in that debate contend that gas is a commodity, sale of which can best be regulated on the basis of market price determination, and that public-utility-type regulation is unsuitable for the risky and highly competitive gas producing segment of the industry.[11] The only rate-standard cases decided by the courts to date have been those involving pipeline-company-produced gas; no rate case has yet been decided by the courts involving sales by an independent producer.

Under competitive conditions which exist in the producing segment of the gas industry, gas prices arrived at as a result of arm's-length bargaining are market prices.[12] This means, therefore, that governmental intervention is not necessary to accomplish what many eminent jurists, legislators, and administrative officials believe to be a desirable purpose of federal regulation. We are confident we can demonstrate that the public interest will be adequately protected if, as Congress

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[8] *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U. S. 591 (1944), particularly Justice Jackson's dissenting opinion, 320 U. S. at 628; *City of Detroit* v. *Federal Power Commission*, 230 F. 2d 810 (C. A. D. C. 1956) *cert.* den. 352 U. S. 829 (1957).

[9] Harris-O'Hara Bill, H. R. 8525, 85th Cong., 1st sess. (1957).

[10] See Judge Brown's comments below on FPC Docket R-142, terminated December 1, 1955 without determination of suitable standards for fixing producer rates (App. 33a-34a); Thirty-sixth Annual Report of the Federal Power Commission, 1956, p. 19.

[11] *E.G.*, Justice Jackson's dissenting opinion in *Hope* case, 320 U. S. at 628.

[12] H. Rept. No. 837, 85th Cong., 1st sess. (1957).

intended, gas sales made prior to completion of production, gathering, and processing are held to be matters that are local in nature, not subject to regulation under the Act. We submit that adequate protection will be afforded, if federal regulation is limited to wholesales of gas in interstate commerce made after completion of production, gathering and processing. As to the related facet of the public interest—*i.e.*, assurance of an adequate supply of gas—experience has proven that market price will furnish producers the incentive to conduct sufficient exploratory and producing operations to bring forth adequate supplies of gas.[13]

In connection with economic considerations, it can be demonstrated that regulation of wellhead sales of casinghead gas is neither feasible nor practicable and that present Commission attempts, in reality, do no more than regulate sales by processing plant owners to the interstate transmission lines.[14]

III.

THIS COURT HAS NOTED PROBABLE JURISDICTION IN KANSAS CASE INVOLVING AN ISSUE COMMON TO THIS CASE

Cities Service Gas Company v. *State Corporation Commission of Kansas*, Cause No. 85 on this Court's docket, is an appeal from a decision by the Supreme Court of Kansas[15] holding a Kansas Corporation Commission order fixing a minimum price on wellhead sales of gas-well gas destined for interstate movement to be a valid exercise of the State's conservation power

[13] Footnote 12 above.

[14] Commission Order No. 190, Docket R-144, 21 F. R. 7616, October 4, 1956.

[15] 180 Kan. 454, 304 Pac. 2d 528 (1956).

and not state regulation of a "sale in interstate commerce of natural gas for resale" within the meaning of the Natural Gas Act. The Kansas Commission set the minimum price "as a condition precedent for withdrawal [of gas] from the common source of supply [the Hugoton Field]."

The Supreme Court of Kansas distinguished *Phillips* and *Panoma*, *supra*, on the same ground which we discussed above, *i.e.*, that those cases involved wholesales of natural gas consummated after completion of production, gathering and processing. The minimum price order was found to be an incident of production and therefore exempt from federal regulation.

This Court has noted probable jurisdiction in the *Kansas* case. Although that case involves a state minimum price order and this case involves a wellhead sale of casinghead gas, the basic question in both cases is the extent of Federal Power Commission jurisdiction under the Act. The Court below would obviously hold that a wellhead sale of gas-well gas should be classed as "in" interstate commerce because of "continuous flow", and that "production or gathering" cover only the physical activities, facilities and properties used in production and gathering, exclusive of all sales. Under the decision below, therefore, control of the Kansas wellhead price would not come within the exemptive provision of § 1(b).

Thus, there is a conflict between the Kansas decision and the decision of the Court below as to the effect to be accorded the exemptive provision of § 1(b) of the Act. If this issue is to be reviewed by this Court in the *Kansas* case, we respectfully submit that it should also be reviewed in conjunction with the important but

differently faceted situation here involved. We do not imply that we consider the question of exemption of production or gathering under § 1(b) as the single or cardinal issue in our case. We believe the other questions discussed above to be of equal or greater importance, and each provides an adequate reason why *certiorari* should be granted here.

IV.

DECISION BELOW CONFLICTS WITH DECISIONS OF THIS COURT

The Court below holds that sales of gas can never be considered a part of "production or gathering", but that this provision of § 1(b) of the Act covers only "the physical activities, facilities and properties used . . . in the production and gathering of natural gas".[16] This holding conflicts with the decision of this Court in *Panhandle Eastern, supra,* where a sale of gas in place was held to come within the "production or gathering" exemption. There, this Court rejected the Commission's contention that the § 1(b) exemption applied only to the activities of production and gathering and not to the transaction involved.

The decision of the Court below also concludes that processing of casinghead gas is not an interruption of the "continuous flow" of gas from the wellhead to the consumer burner tip, but is merely a part of the business of transporting and marketing gas in interstate commerce.[17] In support of this holding, the Court cites *City of Detroit* v. *Federal Power Commission,* 230 F. 2d 810, 820 (C. A. D. C., 1956), *cert.* den. 352 U. S. 829 (1957), to be compared with *Cities Service Gas Company* v. *Federal Power Commission,* 155

[16] App. 14a.

[17] App. 12a.

F. 2d 694, (C. A. 10, 1946) *cert.* den. 329 U. S. 773 (1947).

These cases are not in point for at least two reasons. In the first place, they involved pipeline-company-produced gas, movement of which was launched with the intent and knowledge that the gas would be transported in interstate commerce and sold for resale. Secondly, these cases primarily involved the question of determining the proper standard of rate regulation for companies which were admittedly making sales of natural gas in interstate commerce for resale. There was no question but that the Commission had jurisdiction to regulate the particular sales involved; the only issue relevant there was whether costs and revenues in connection with production operations could be considered by the Commission in determining the rate base and cost of service for the companies involved.

The holding that processing is not an interruption of the interstate flow of gas is in conflict with premises employed in at least two cases decided by this Court. In *Interstate, supra,* the Court was confronted with the contention by *Interstate* that its purchaser compressed the gas after receiving it from *Interstate* and that this compression constituted an interruption of the interstate flow of the gas, thereby making the sale in question local in character. The Court's holding was summarized in the following language:

> "The entire movement of the gas from the wells to the purchasing companies through the compressor pumps and across the state lines is a continuous process *without interruption for storage, processing or for any other purpose . . .*" (331 U. S. at 685; emphasis supplied).

Although compression was held not to interrupt the interstate flow of gas, the clear implication is that extraction processing, such as that involved here, would be such an interruption of flow as would make the sale local in character.

Michigan-Wisconsin Pipe Line Company v. *Calvert*, *supra*, involved a sale of residue gas at the outlet of a processing plant. Justice Clark, speaking for the Court, analogized extraction processing to the generation of electricity which this Court earlier in *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165 (1932), had held to be "local in character." But he concluded that the sale in question was made after such processing and was, therefore, a sale in interstate commerce.[18]

From these expressions by this Court, it appears that processing is an interruption of "continuous flow" and that the holding of the Court below is in conflict with the principle of law which this Court considers applicable to a situation such as that here involved.

In the companion decisions which the Court below said were parallel in facts and decisive of this case, two statements were made which are not applicable here. One was that Deep South admitted "continuous flow" of its gas from the well to the burner tip (App. 11a). The other was that Shell's contract contained an express provision contemplating resale of its gas in interstate commerce. Humble made no such admission and has no such provision in its contracts involved here.

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[18] 347 U. S. 168, 169, particularly footnote 6.

CONCLUSION

We urge that this Petition for a Writ of *Certiorari* be granted for the reasons hereinabove set forth.

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Certificate of Service

I certify that the foregoing Petition for a Writ of *Certiorari* to the United States Court of Appeals for the Fifth Circuit was served upon Respondent, the Federal Power Commission, by mailing a copy thereof by United States mail, postage prepaid to each of the following attorneys for Respondent on the 13th day of September, 1957:

J. LEE RANKIN,
Solicitor General
Department of Justice
Washington 25, D. C.

WILLARD W. GATCHELL, *General Counsel*
W. RUSSELL GORMAN, *Assistant General Counsel*
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Washington 25, D. C.

/s/ WILLIAM J. MERRILL
Attorney for Petitioner
HUMBLE OIL & REFINING COMPANY

APPENDIX

Judgment

Extract from the Minutes of June 29, 1957.

No. 15884

HUMBLE OIL & REFINING COMPANY,

VERSUS

FEDERAL POWER COMMISSION,

This cause came on to be heard on the petition of Humble Oil & Refining Company for a review of an order of the Federal Power Commission issued on September 9, 1955, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the order of the Commission in this cause be, and the same is hereby, affirmed.

"Brown, Circuit Judge, dissenting."

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 15884

HUMBLE OIL & REFINING COMPANY,
Petitioner,

VERSUS

FEDERAL POWER COMMISSION,
Respondent.

PETITION OF REVIEW OF AN ORDER OF THE FEDERAL POWER COMMISSION, SITTING AT WASHINGTON, D. C.

(June 29, 1957.)

Before BORAH, RIVES and BROWN, Circuit Judges.

BORAH, Circuit Judge: This is a companion case to the two cases we have decided today in Numbers 15,849—*Deep South Oil Company of Texas* v. *Federal Power Commission*, and 15,900—*Shell Oil Company* v. *Federal Power Commission*, in that petitioner herein has invoked the jurisdiction of this Court under Section 19(b) of the Natural Gas Act to review and set aside the order of the Federal Power Commission which is the subject also of review in those cases.

Petitioner's basic contentions and the grounds asserted for setting aside the Commission's order are in essence identical to those urged by petitioners in the two companion cases. Consequently, and by reason of the circumstance that the facts in this case present an identity of

legal principles with those involved in the *Deep South* and *Shell* cases, *supra*, what we have said in those cases is dispositive of this case. Accordingly, and for the reasons there stated at length, we conclude that the order of the Commission declaring Humble Oil & Refining Company to be a "natural-gas company" within the meaning of the Act, must be and hereby is affirmed.

AFFIRMED.

BROWN, Circuit Judge: I dissent for reasons hereafter to to be filed.

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 15849

DEEP SOUTH OIL COMPANY OF TEXAS

Petitioner,

VERSUS

FEDERAL POWER COMMISSION,

Respondent.

PETITION OF REVIEW OF ORDERS OF THE FEDERAL POWER COMMISSION, SITTING AT WASHINGTON, D. C.

(June 29, 1957.)

Before BORAH, RIVES and BROWN, Circuit Judges.

BORAH, Circuit Judge: This case comes to us on the petition of Deep South Oil Company of Texas to review, pursuant to Section 19(b) of the Natural Gas Act,[1] order

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[1] 15 U. S. C. § 717r(b).

of the Federal Power Commission determining that Deep South is a "natural-gas company" as that term is defined in the Act.[2]

Deep South is a small, unintegrated corporation engaged in the exploration for and the production of oil and gas. Its properties are located in the State of Texas, and its oil and gas facilities consist only of oil and gas well equipment, including flow lines, heaters and separators, together with such valves, tanks, and meters as are required for the operation of its wells and lines. As revealed by the record before us, Deep South owns or has an interest in and operates fourteen wells in the Big Hill Field located in Jefferson County, Texas. Five of these wells produce "casinghead gas"[3] and nine produce "full stream" or "gas well gas,"[4] and all of the gas from these wells which is not used in the field for drilling purposes by Deep South or other operators is sold to Texas Gas Corporation pursuant to a contract which was executed on February 15, 1952, for a term of twenty years. This agreement by its terms provides that the leases and lands which Deep South owns or acquires in the Big Hill area are "dedicated" to the performance of the contract, and that the gas shall be

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[2] By Section 2(6) of the Natural Gas Act "natural-gas company" is defined to mean "a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale."

[3] "Casinghead gas" is gas that is produced along with oil from an oil well and ordinarily consists of fixed gases, principally methane in bulk with other hydrocarbons ranging from the lighter ones down to the quite heavy ones. Mixed with those hydrocarbons are water vapor, acid gases, hydrogen sulphide and carbon dioxide, in addition to other fairly common diluents such as nitrogen, helium, and various sulphur compounds, and impurities such as drilling mud, rust, sand and dirt.

[4] "Full stream gas wells," "straight gas wells," and "gas distillate wells" are synonymous terms and the gas produced therefrom is "gas well gas," which contains fewer liquefiable hydrocarbons than gas produced in association with oil.

delivered at each of Deep South's wells located on the dedicated leases in a full stream, *in its natural state, without the extraction therefrom of any gasoline or other liquefiable hydrocarbons.*[5] Prior to delivery under the contract, the "casinghead gas" is separated from the oil with which it is produced at a field separator, and the "full stream gas" is treated for the removal of water at a so-called "free-water knockout." Within a few feet from the point at which the gas leaves the aforementioned mechanical devices, it passes into Texas Gas' meters which are located on the leases near the wellheads from which the gas is produced. There it is measured and delivered and title thereto passes to Texas Gas. Thereupon the gas then moves from these metering points through a network of converging pipelines of progressively larger size to the purchaser's processing plant at Winnie, Texas, which is located about seven miles from the Deep South leases. During the course of this movement, the gas purchased from Deep South is commingled in the pipelines with gas which Texas Gas has purchased from other operators in the area. At the Winnie processing plant all of the casing head gas and gas well gas purchased by Texas Gas is processed for removal of water vapor and liquefiable hydrocarbons. After processing, the gas is discharged into a common sales header and pursuant to a contract between Texas Gas and Texas Eastern Transmission Corporation a portion of such gas flows into the latter's interstate transmission lines for transportation and resale in interstate commerce. This contract between Texas Gas and the pipeline company is for a minimum of fifteen years and by its terms the gas purchase contract between Deep South and Texas Gas and the gas which may be produced from the lands and leaseholds covered thereby are "dedicated" to the performance of the contract between Texas Gas and Texas Eastern.

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[5] All italics herein ours.

The proceeding before the Commission which gave rise to this petition for review was initiated by Deep South when, in conformity with Rule 1.7(c) of the Commission's Rules of Practice and Procedure, it filed a petition for a declaratory order[6] in which it requested the Commission to declare that petitioner's sales of natural gas to Texas Gas are not subject to regulation under the Natural Gas Act, 15 U. S. C. §§ 717-717w, and that petitioner is not a "natural-gas company" within the meaning of the Act or subject to the provisions of the Commission's Order No. 174-A.[7] This proceeding, Commission's Docket No. G-2952, was consolidated for the purposes of hearing with proceedings on two similar petitions filed by Shell Oil Company and Humble Oil & Refining Company, Commission's Docket Nos. G-4671 and G-5261, respectively. After a hearing and upon the facts of record, the presiding examiner decided that petitioners' sales of gas, and each of them, were sales in interstate commerce of natural gas for resale within the purview of the Natural Gas Act, and that by reasons of such sales, each of the petitioners was a "natural-Gas company" subject to regulation under the provisions of the Act. Accordingly, petitioners' respective prayers for declaratory relief were denied.

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[6] In its amended and supplemental petition Deep South sought declaratory relief from the Commission with respect to a sale made from a single gas well in Refugio County, Texas. Subsequent to the hearing before the presiding examiner this well became exhausted, the equipment was dismantled and all deliveries of gas from the well discontinued. For that reason, Deep South withdrew its request for relief with respect to this well, the withdrawal being made at the time of the argument before the Commission. The Commission's opinion and order contain references to this well, but the questions relating to it are now moot and are not referred to in Deep South's petition for review or discussed in its brief.

[7] See *Magnolia Petroleum Company* v. *Federal Power Commission*, 5 Cir. 236 F. 2d 785, cert. denied 352 U. S. 968, for a discussion of Order No. 174-A.

Deep South, Shell, and Humble Oil thereupon filed exceptions to the decision of the presiding examiner and the Commission, after hearing oral argument thereon, issued on September 9, 1955, its Opinion No. 284 and accompanying order affirming the decision of the examiner for the reasons therein stated. In its opinion the Commission noticed the fact that these consolidated proceedings presented to it for the first time the question whether sales of natural gas made before the completion of "production and gathering" are exempt from the Natural Gas Act by reason of the exclusionary provision of Section 1(b) of the Act. In resolving this question the Commission rejected petitioners' claims that "casinghead gas" is not "natural gas" within the meaning of the Act, and expressly affirmed the examiner's conclusion that there is nothing in the Natural Gas Act which supports petitioners' assertion that regulation under the Act is confined to fuel gas which consists "almost entirely of methane and ethane." Likewise, the Commission concluded that there was no merit in the contention that the sales in question are for "manufacture" and not for "resale." And, on the basis of its finding that the entire movement of the gas from the producing wells through the processing plants to consumers in other states is an uninterrupted and continuous flow, the Commission determined that the gas which is sold by petitioners is sold "in interstate commerce." Finally, the Commission concluded that none of the sales is exempt from regulation under the Act for the reason that the exemptive language of Section 1(b) does not nullify the clear and specific grant of jurisdiction over "sales of natural gas in interstate commerce for resale." Thereafter and agreeable to the provisions of Section 19(a) of the Act, petitioners filed applications for rehearing of this order, which applications were on November 4, 1955, denied by order of the Commission. Whereupon, Deep South, Shell, and Humble Oil, each filed a petition

for review,[8] praying that the orders of September 9 and November 4, 1955, be set aside in their entirety and that this Court further determine and declare that petitioner is not a "natural-gas company" within the meaning of the Act and that its sales are not subject to the jurisdiction of the Commission.

In this review proceeding as in the proceeding which was had before the Commission, Deep South raises two issues. The first and principal point urged is that the sales made by it are not within the specific affirmative grant of jurisdiction to the Commission over sales "in" interstate commerce, for the reason that all of the relevant circumstances establish that they are "local" in character. We do not agree. In our opinion the statutory language, its legislative history and prior decisions of the Supreme Court compel a contrary conclusion. When the Act was passed in 1938, Congress declared the national policy in doing so as follows:

> "Section 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to Senate Resolution 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest."

In the hearings which were had before the House Committee on Interstate and Foreign Commerce prior to the adoption of the Act, Congress was fully informed as to

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[8] Shell Oil Company's petition for review has been docketed as cause No. 15,900 and Humble Oil & Refining Company's petition has been docketed as cause No. 15,884. The three cases were consolidated for purposes of argument and submission by order of Court entered June 25, 1956, however, separate opinions and judgments will be filed and entered in each case.

the need for such regulation and among other considerations it was cognizant of the fact that the prices at which local distributing companies can sell gas are in very large part determined by the prices they are required to pay for the same to interstate pipeline companies. It was strongly urged to Congress that the public cannot be protected from exploitation in the prices charged for natural gas unless Government shall control not only the price charged by the companies which deliver the gas to the consumer, but also the prices of all companies which cooperate in bringing the gas from the wells in the state of production to the ultimate consumer in the state of distribution.[9] The Committee reports on the bill which became the Natural Gas Act specifically stated that "sales for resale, or so-called wholesale sales in interstate commerce *(for example, sales by producing companies to distributing companies)* . . . have been considered [by the courts] to be *not local in character*, and even in the absence of Congressional action not subject to State regulation."[10] Accordingly, Congress provided in Section 1(b) of the Act the following:

> *"The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption . . . and to natural-gas companies engaged in such transportation or sale,* but shall not apply to any other transportation or sale of natural gas . . . or to the production or gathering of natural gas."

"Natural gas" is defined in Section 2(5) of the Act to mean "either natural gas unmixed, or any mixture of natural or artificial gas," and in Section 2(7) "interstate commerce" is defined as "commerce between any point in

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[9] Hearings before House Committee on Interstate and Foreign Commerce on H. R. 4008, 75th Cong., 1st Sess., p. 142.

[10] H. R. Rep. No. 709, 75th Cong., 1st Sess. 1-2; S. Rep. No. 1162, 75th Cong., 1st Sess., 1-2.

a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States."

In numerous decisions, the Supreme Court has recognized that the Act was primarily designed to protect consumer interests against exploitation at the hands of private natural gas companies, and with particular reference to sales by independent producers the Court, in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U. S. 672, 682, said:

> "... we believe that the legislative history indicates a congressional intent to give the Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company."

And in emphasizing the purpose of the Natural Gas Act to protect consumers, the Court at page 685 observed that:

> "Regulation of the sales in interstate commerce for resale made by a so-called independent natural-gas producer is not essentially different from the regulation of such sales when made by an affiliate of an interstate pipeline company. In both cases, the rates charged may have a direct and substantial effect on the price paid by the ultimate consumers. Protection of consumers against exploitation at the hands of natural-gas companies was the primary aim of the Natural Gas Act. *Federal Power Commission* v. *Hope Natural Gas Co., supra*, at 610. Attempts to weaken this protection by amendatory legislation exempting independent natural-gas producers from federal regulation have repeatedly failed, and we refuse to achieve the same result by a strained interpretation of the existing statutory language."

Having in mind the obvious purpose of Congress which was to see that there was effective regulation of all inter-

state wholesale sales of natural gas, it would be an exceedingly incongruous result if a statute so motivated and planned to bring about such regulation were construed so as to obtain the opposite result. To hold, as petitioner would have us do, that it may set up its own interests in complete freedom from regulation of the price of its wholesale sales would be to permit it, if it were so inclined, to engage in the every exploitation which the Act was designed to prevent. We cannot therefore subscribe to the view that the Act contemplates that petitioner or any other independent producer should be free of price regulation, if it is engaged in the sale in interstate commerce of natural gas for resale.

As to petitioner's claim that its sales are "local" in character, we think it plain that they are sales "in interstate commerce" for the obvious reason that the sale of gas originating in one state and its transmission and delivery to distributors in any other state constitutes interstate commerce. *Federal Power Commission* v. *Natural Gas Pipeline Company of America*, 315 U. S. 575, 582. *Cf. Federal Power Commission* v. *East Ohio Gas Co.*, 388 U. S. 464, 467. The fact that the sales are made at the wellhead is immaterial for the particular point at which the title and custody of the gas pass to the purchaser, without arresting its movement to the ultimate interstate destination, does not affect the essential interstate nature of the business. *Illinois Gas Co.* v. *Public Service Co.*, 314 U. S. 498, 503-504. Here, petitioner's own brief testifies eloquently to the continuous movement of the gas which it sells at the wellhead. Petitioner admits, as, of course, it must, "that there is a continuous flow of gas from the Deep South wells into the gathering system of Texas Gas; that the mass of gas of which the Deep South gas becomes a part moves continuously through the gathering system into a processing plant; that the movement through the processing plant is continuous; that there is a continuous movement of natural gas from the outlet of the processing plant to both interstate and intrastate destinations. . . ."

Accordingly, and in the light of all of the uncontroverted facts, we hold that when the gas was sold by petitioner it had commenced its journey in interstate commerce.

We are likewise no more impressed than was the Commission with the claim that petitioner's sales were made for "manufacture", not for "resale." This contention is made notwithstanding the fact that all of the parties to the contract between Deep South and Texas Gas fully understood that the gas was to be resold in wholesale quantities by the buyer. In the conduct of its business, petitioner sells its gas in bulk to Texas Gas. Texas Gas in turn and at the tailgate of its processing plant resells the gas which it purchases from petitioner to an interstate transmission company for resale, as well as to intrastate customers. The inescapable fact here then is that at least some portion of the gas sold by petitioner is resold to consumers outside the State of Texas. Consequently, there can be no question that petitioner is making sales for resale within the meaning of the Act. Nor is it of significance that the gas in the course of its interstate transmission passes through Texas Gas' processing plant. The processing herein involved is not an interruption of the interstate journey and is not "manufacture." On the contrary, as noted above, the processing does not interrupt the continuous movement of the gas from the wellhead to consumer burner tips and is merely a part of the business of transporting and marketing gas in interstate commerce. *City of Detroit* v. *Federal Power Commission*, D. C. Cir., 230 F. 2d 810, 820, cert. denied 352 U. S. 829. *Cf. Cities Service Gas Co.* v. *Federal Power Commission*, 10 Cir., 155 F. 2d 694, cert. denied 329 U. S. 773.

Petitioner also insists that the casinghead gas which its sells is not "natural gas" within the meaning of the Act. For answer we deem it sufficient to say that there is nothing in the general language used in the definition of "natural gas," quoted above, which suggests that a special or narrow or unnatural definition of "natural" was meant. Boone's Petroleum Dictionary (1952) defines

natural gas as *a mixture of gaseous hydrocarbons found in nature* in many places connected with deposits of petroleum, to which the gaseous compounds are closely related. The record in this case shows that the principal constituents of natural gas which is used as a domestic or industrial fuel are methane and ethane; that casinghead gas contains methane and ethane, as well as other constitutents that are valuable, such as propane, butane, and the heavier components that comprise natural gasoline; and that it is economically desirable to remove these additional components for their value. The gas sold by petitioner contains the methane and ethane which constitutes the bulk of fuel gas distributed to domestic, commercial and industrial consumers. And the extraction process to which the gas is subjected after delivery under the sales contract does not create or add to the product any amount of either of those components. Thus, it is plain that casinghead gas is not any the less "natural" gas because it contains variable amounts of other constituents.

The petitioner alternatively contends, however, that regardless of whether the sales in question are sales in interstate commerce, the transactions fall within the clause of Section 1(b) of the Act which specifically excepts from the Commission's jurisdiction the regulation of ". . . . the production or gathering of natural gas." We do not at all agree, but on the contrary think that our observations in *Interstate Natural Gas Company* v. *Federal Power Commission*, 156 F. 2d 949, 951, supply a ready answer to this contention. There, in speaking of Section 1(b), we said:

> "[The Act] is very simply and plainly written. After stating what it shall apply to, it then states what it shall not apply to. Under familiar rules of construction a negation in or exception to a statute will be construed so as to avoid nullifying or restricting its apparent principal purpose and the positive provisions made to carry them out. . . . Here the statute was drawn to regulate, it picked out for inclusion

'sale in interstate commerce of natural gas for resale for ultimate public consumption.' . . . Unnecessarily perhaps but in the interest of making clear that the act gave jurisdiction only over sales and transportation of the kind described in it, it used language removing from any doubt that the Commission was not to have jurisdiction over properties used for production and local distribution or the activities of production and gathering. It did this by expressly providing that the act should not apply 'to the facilities used for such [i.e. local] distribution or to the production or gathering of Natural gas.' ''

The exemption of production and gathering merely means that the physical activities, facilities and properties used by petitioner in the production and gathering of natural gas are not within the commission's power of regulation. However, there is nothing in the Act which suggests, either expressly or by implication, that by the exemption of production and gathering, Congress intended that the wholesale sales of natural gas in interstate commerce which are consummated before the gas has been gathered or processed should not be regarded as sales in such commerce over which the Commission was granted exclusive jurisdiction to regulate.

Petitioner argues, however, that what is involved here is "more than merely regulation of sales," for the reason that our decision herein will give rise to certain hypothetical situations predicated upon assumed future actions by the Commission, viz., that should certificates of public convenience and necessity which petitioner will apply for be refused, Deep South must close its wells and suspend operations, and that petitioner must obtain the Commission's permission before discontinuing sales from a well which has been found subject to Federal jurisdiction. No such issues are presented in the instant case, and it will be time enough to pass upon those isues if and when they are properly presented.

In the light of the foregoing it follows that the order of the Commission declaring Deep South Oil Company of

Texas to be a "natural-gas company" within the meaning of the Natural Gas Act should be and the same hereby is affirmed.

AFFIRMED.

BROWN, Circuit Judge: I dissent for reasons hereafter to be filed.

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 15900

SHELL OIL COMPANY,

Petitioner,

VERSUS

FEDERAL POWER COMMISSION,

Respondent.

PETITION FOR REVIEW OF AN ORDER OF THE FEDERAL POWER COMMISSION, SITTING AT WASHINGTON, D. C.

(June 29, 1957.)

Before BORAH, RIVES and BROWN, Circuit Judges.

BORAH, Circuit Judge: This is a companion case to *Deep South Oil Company of Texas* v. *Federal Power Commission*, No. 15,849, this day decided, in that Shell Oil Company, pursuant to Section 19(b) of the Natural Gas Act, is seeking review of the order of the Federal Power Com-

mission which is the subject also of review in the *Deep South* case.

While the facts in the instant case are similar to those presented in *Deep South*, they are not identical thereto, and for present purposes they may be summarized as follows: Petitioner herein, Shell Oil Company, is engaged in the business of exploring for, producing, refining and marketing petroleum and petroleum products, and with respect to its Texas operations, it produces and sells "casinghead gas" at or near the wellhead from nineteen oil wells in the McElroy Field and eight oil wells in the Nome Field. It also sells "gas well gas" from one well in the latter field.

The casinghead gas which is produced in the McElroy Field is sold to Phillips Petroleum Company pursuant to a contract entered into between Phillips and petitioner's assignor on May 7, 1936. The contract provides, among other things, that Phillips shall pay to the seller fifty percent of the net proceeds received from any sale of the gas which it sells from the gasoline plant. Prior to delivery under the contract the gas from each of the nineteen wells located in this field passes through the wellhead and into a flow line which is connected with a single central field separator (located on Shell's lease) where the gas is separated from crude oil and free water. Within a few feet from the point at which the gas leaves this separator it is metered and delivered and title thereto passes to Phillips. As in *Deep South*, the gas sold by petitioner is commingled in the purchaser's field pipelines with casinghead gas from a number of other wells in the field and the commingled mass of gas thereafter enters Phillips' Crane gasoline plant where it is scrubbed, compressed, and run through absorption towers for the removal of liquefield hydrocarbons. The greater part of the gas is thereafter sold by Phillips at the tailgate of the Crane plant to El Paso Natural Gas Company. Inasmuch as this gas contains too high a percentage of hydrogen sulphide and carbon dioxide for use as a domestic burner tip fuel, El Paso further treats the gas which it purchases to

remove these incombustible diluents, dehydrates the gas, and then turns it into one of its transmission lines for transportation in other States.

All of Shell's gas, both casinghead and gas well gas, which is produced in the Nome Field is sold to Texas Gas Pipeline Corporation, a subsidiary of Texas Gas Corporation, pursuant to a contract entered into on October 15, 1954. As in the contract between Deep South and Texas Gas, the contract for the sale of Shell's gas from the Nome Field similarly commits to the performance thereof all of the gas to be produced from Shell's leases in that field and provides that the gas is to be delivered in a full stream without the extraction of gasoline or other hydrocarbons. Likewise, as in the case of Deep South, the purchaser receives delivery of the casinghead gas at the outlet valve of field separators and the gas well as is delivered at the wellhead. After taking title and delivery at these points, the purchaser then commingles the gas in its field pipelines with gas purchased from many other sources and transports the commingled mass to the Winnie processing plant which is owned and operated by its parent corporation. At the Winnie plant the gas is processed for the removal of water vapor and liquefiable hydrocarbons and thereafter Texas Gas Pipeline Corporation receives for interstate shipment a portion of the processed gas.

As we noted in the *Deep South* opinion, the proceedings in this cause as well as in Cases Nos. 15,849 and 15,884, were consolidated before the Commission for hearing and in both the presiding examiner's decision and the Commission's Opinion No. 284, it was determined that all sales of natural gas by Deep South, Shell, and Humble Oil, there under consideration, were sales of natural gas in interstate commerce for resale within the meaning of the Natural Gas Act and that each of the petitioners was a "natural-gas company" subject to the Commission's jurisdiction.

In this review proceeding, the basic contentions and the grounds asserted for setting aside the Commission's order

are in essence identical to those urged by petitioner in the *Deep South* case, *supra*, and what we have said in that case is dispositive of those issues. However, and in view of petitioner's vigorous assertion that its sales to Phillips of casinghead gas which must be processed by both its purchaser and the subsequent buyer, El Paso, are not for "resale" but for "manufacture," we shall set forth in this opinion our reasons for rejecting this argument.

Petitioner relies strongly on the "purpose" clause of its contract with Phillips which provides that the casinghead gas sold thereunder is conveyed to the buyer for the purpose of manufacturing gasoline or such other products as may be manufactured at the Crane plant. It should not be overlooked, however, that this contract contains no limitation on the authority of Phillips to dispose of the gas in any way it sees fit, and affirmatively provides that the buyer shall have the right to sell any or all surplus gas remaining after the "extraction" of gasoline and also provides for the payment to petitioner of fifty percent of the receipts from such sales. Thus, the true purpose of the contract includes the sale of the gas which remains after processing as well as the sale of extracted products. But be this as it may, the legal determination of the question rests not upon the parties' use of the word "manufacture," but upon the actual disposition of the gas. The record here clearly shows that the gas sold to Phillips is resold by it and that the parties contemplated that the buyer would resell the gas in wholesale quantities is revealed in Section 3.02 of the contract which reads: "Buyer has applied to the Federal Power Commission for a Certificate of Public Convenience and Necessity *in order to establish a market for the gas committed hereto and to perform its obligations to seller under this contract. . . .*" (Emphasis supplied.) Thus, as in *Deep South*, there can be no question that petitioner is making sales in interstate commerce of natural gas for resale within the meaning of the Act.

Accordingly, the order of the Commission must be and the same hereby is affirmed.

AFFIRMED.

BROWN, Circuit Judge: I dissent for reasons hereafter to be filed.

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 15849

DEEP SOUTH OIL COMPANY OF TEXAS,
Petitioner,

VERSUS

FEDERAL POWER COMMISSION,
Respondent.

No. 15900

SHELL OIL COMPANY,
Petitioner,

VERSUS

FEDERAL POWER COMMISSION,
Respondent.

No. 15884

HUMBLE OIL & REFINING COMPANY,
Petitioner,

VERSUS

FEDERAL POWER COMMISSION,
Respondent.

No. 16130

CONTINENTAL OIL COMPANY,
Petitioner,

VERSUS

FEDERAL POWER COMMISSION,
Respondent.

PETITIONS FOR REVIEW OF ORDERS OF THE FEDERAL POWER COMMISSION, SITTING AT WASHINGTON, D. C.

(July 30, 1957.)

Before BORAH, RIVES and BROWN, Circuit Judges.

BROWN, Circuit Judge, dissenting: Again, my differences, while substantial are basic and, in this approach, as before, *Magnolia Petroleum Co.* v. *Federal Power Commission*, 5 Cir., 236 F. 2d 785 at 793 to 811, I accept the Court's fair and faithful outline of the cases. Since these cases [1] present the common problem of jurisdiction of the Federal Power Commission over the first sale by an oil-gas-well producer made before production or gathering has ended, I treat them together despite minor variations in factual details.

Likewise, it both simplifies and emphasizes the nature of this problem to concentrate primarily upon the most common transaction [2]—the sale of casinghead gas to a processor who in turn sells residue gas to an interstate pipe line.

In this way we come to see what might otherwise be obscured. The problem really is: What did Congress in 1938 mean by the language of Section 1(b).[3] I purpose,

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[1] In 16,130, *Continental Oil Company* v. *Federal Power Commission*, 5 Cir. ..... F. 2d ..... [June 29, 1957], procedural problems arise and are discussed. I am in agreement with the Court's disposition of these, and my differences as to that case relate solely to the basic issue.

[2] Deep South to Texas Gas to Texas Eastern.
Shell to Texas Gas Pipeline to Transcontinental.
Shell to Phillips to El Paso Natural Gas.
Humble to Processors to Pipe Line Companies.

[3] § 1(b), 15 USCA 717(b):

"The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in

fully emphasize 1938. For the circumstances of the passage of the Natural Gas Act were so unique that, we are told, "• • • *prior* constitutional decisions, not what we have since decided or would decide today, form the measure of the gap which Congress intended to close by this Act. *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, 314 U. S. 498, 508, 86 L. Ed. 471, 377 • • •; and see *Parker* v. *Motor Boat Sales*, 314 U. S. 244, 250, 86 L. Ed. 184, 191 • • •," *Federal Power Commission* v. *East Ohio Gas Company*, 388 U. S. 464, 472, 94 L. Ed. 268, 277.

This refers, of course, to the oft repeated history that Congress legislated to fill the gap created by specific decisions[1] of the Supreme Court. *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission*, 332 U. S. 507, 517-519, 92 L. Ed. 128, 137-139.

This has at least a dual significance. First, it makes terribly important just what those cases decided, because it was the decisions which created the gap. And second, as 1938 Congressional preoccupation with the gap is the test, the jurisdictional parts of the Act must be viewed through 1938 lenses. With that outlook, can it be said that Congress knowingly set in train the consequences which flow from these decisions?

The first becomes of some importance in the Court's view because, in the final analysis, the conclusion reached

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interstate commerce of natural gas for resale for ultimate public consumption • • • and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas • • • or to the production or gathering of natural gas • • •."

[1] *Missouri ex rel. Barrett* v. *Kansas Natural Gas Co.*, 265 U. S. 298, 310, 68 L. Ed. 1027, 1031; *Public Utilities Commission* v. *Attleboro Steam & Electric Co.*, 273 U. S. 83, 89, 71 L. Ed., 549, 553; and see *Pennsylvania Gas Co.* v. *Public Service Commission*, 252 U. S. 23, 64, L. Ed. 434, subsequently repudiated *East Ohio Gas Co.* v. *Tax Commission*, 283 U. S. 465, 73 L. Ed. 1171.

in *Deep South* rests upon a Committee report [5] and the decision of *Phillips Petroleum Company* v. *Wisconsin*, 347 U. S. 672, 98 L. Ed. 1035. The fact is, of course, that neither of the two cases, note 4, *supra*, dealt even remotely with the sale by a producer in an oil field to a processor who in turn sold to an interstate pipe line. In *Attleboro* the utility generated and transported electricity; in *Kansas* the seller to the local distributing company was an integrated producer-transmission pipe line company. So far as *Phillips Petroleum Company* v. *Wisconsin*, *supra*, which I accept, is concerned, I hardly think that, with the Court's studied traditional refusal to deliver advisory opinions even on matters which it knows are then somewhere in the judicial mill and which will inevitably come through its own grist, the Supreme Court meant to decide that *all* sales of gas which, because of molecular identity, flow ultimately from Texas or Louisiana to New York are sales in interstate commerce.

This is but another way of saying that we face an entirely new case—one never before decided. The crucial issue here is whether the sales are in interstate commerce as meant by § 1(b). At the outset in *Phillips* that issue was conceded as "Petitioners admit that Phillips engages in 'the sale in interstate commerce of natural gas for resale,' as, of course, they must. *Interstate Natural Gas Co.* v. *Federal Power Com.*, 331 U. S. 682, 687-689, 91 L. Ed. 1742, 1746-1748," 347 U. S. 672 at 677, 98 L. Ed. 1035 at 1045. The second issue involved here is whether these sales are made in the course of production or gathering. The similar contention in *Phillips* fell by the Court's re-

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[5] The *Deep South* opinion states: "The Committee reports on the bill which became the Natural Gas Act specifically stated that 'sales for resale, or so-called wholesale sales in interstate commerce (for example, sales by producing companies to distributing companies) * * * have been considered [by the courts] to be not local in character, and even in the absence of Congressional action not subject to State regulation.'" H. R. Rep. No. 709, 75th Cong., 1st Sess. 1-2; Senate Rep. No. 1162, 75th Cong., 1st Sess. 1-2.

jecting the Commission's finding and the plain holding that "We are of the opinion * * * that the finding is without adequate basis in law, and that production and gathering, in the sense that those terms are used in § 1(b), end before the sales by Phillips occur," 347 U. S. 672, 678, 98 L. Ed. 1035, 1045. And certainly *Interstate Natural Gas Company* v. *Federal Power Commission*, 331 U. S. 682, 91 L. Ed. 1742, so heavily relied on in *Phillips* cannot have remotely decided our case. To Interstate's contention "that the sales to the three pipe line companies are a part of the gathering process and consequently not within the Commission's power of regulation," the court answered positively "By the time the sales are consumated, nothing further in the gathering process remains to be done," 331 U. S. 682 at 692, 91 L. Ed. 1742 at 1749. This case recognizes also that principles of constitutional law and statutory construction are not equated with laws of physics, so that the inquiry is something more than the schoolboy's quest for molecular identification. Concerning the Congressional purpose to leave production and gathering to the States, the Court stated:

> "It was the intention of Congress to give the States full freedom in these matters. Thus, where sales, though technically consumated in interstate commerce, are made during the course of production and gathering and are so closely connected with the local incidents of that process as to render rate regulation by the Federal Power Commission inconsistent or a substantial interference with the exercise by the State of its regulatory function, the jurisdiction of the Federal Power Commission does not attach * * *," 331 U. S. 682 at 690, 91 L. Ed. 1742 at 1748.

So nothing written so far tells us authoritatively what Congress in 1938 meant to do about sales made prior to completion of production and gathering. Did Congress intend to place this under the control of a remote Federal bureau?

I think the consequences of any such holding are so far-flung and so disturbing to the delicate balance in our system of dual sovereignty that, divining the legislative will as is the judicial function, *United States* v. *American Trucking Associations*, 310 U. S. 534, 543, 84 L. Ed. 1345, 1350, and whether we look at this through 1938 lenses or 1957 bifocals, I cannot believe that Congress in this innocuous way thought that it was remaking the concept of our political economy.

Since it is the fact of *movement*[6]—continuous and almost irrepressible movement—from the time the gas molecule first begins to stir and is once released from the bowels of the earth until consumed at the Brooklyn burner tip—that is the characteristic which to the Court makes this inevitably interstate, the impact has been dramatically described, *Heisler* v. *Thomas Colliery Co.*, 260 U. S. 245, 259-260, 67 L. Ed. 237, 243:

> "The reach and consequences of the contention repel its acceptance. If the possibility, or, indeed, certainty, of exportation of a product or article from a state, determines it to be in interstate commerce before the commencement of its movement from the state, it would seem to follow that it is in such commerce from the instant of its growth or production; and in the case of coals, as they lie in the ground. The result would be curious. It would nationalize all industries; it would nationalize and withdraw from state jurisdiction and deliver to Federal commercial control the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts, and the woolen industries of other states at the very inception of their production or growth; that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof,' wool yet unshorn, and coal yet unmined, because they are, in varying

[6] The Court's decision of "sale in interstate commerce" is a bootstrap conclusion: it is an interstate sale because of the movement and yet the movement occurs only because of the sale.

> percentages, destined for and surely to be exported to states other than those of their production."

Such a holding withdraws from the states a traditional field for effective regulation of an economic activity of major importance to the general welfare of the state. Specifically, such a holding will forbid state regulation of oil and gas production activities insofar as that state policy is aimed at, or works through, the use of minimum prices.

This is no theoretical academic possibility. This is an actual fact of a present doctrine whose applicability is limited only by the ultimate judicial declaration of the earth-ward limits of a jurisdictional sale. As a part of the yet unascertained fallout of the atomic *Phillips* decision, the Court in *Natural Gas Pipeline Company of America* v. *Panoma Corporation* and *Natural Gas Pipeline Company of America* v. *Corporation Commission of the State of Oklahoma,* 349 U. S. 44, L. Ed. 866, held that as to sales within the jurisdictional limits of *Phillips*, the State of Oklahoma was forbidden to apply its otherwise constitutional[7] power to prescribe n .num prices for Oklahoma gas sold or delivered. The Court with brief but awesome finality said:

> "In these cases Oklahoma has attempted to fix a minimum price to be paid for natural gas, after its production and gathering has ended, by a company which transports the gas for resale in interstate commerce. We held in Phillips Petroleum Company v. Wisconsin, 347 U. S. 672, 98 L. Ed. 1035 * * * that

[7] Apart from the effect of the Natural Gas Act, the predecessor of this very same state order (identical except as to the price) was upheld in *Cities Service Gas Company* v. *Peerless Oil & Gas Company*, 340 U. S. 179, 95 L. Ed. 190, and *Phillips Petroleum Company* v. *State of Oklahoma*, 340 U. S. 190, 95 L. Ed. 204. As to these, the Court in Panoma said, "In those cases we were dealing with constitutional questions and not the construction of the Natural Gas Act * * *," 349 U. S. 44 at 45, 99 L. Ed. 866 at 867.

such a sale and transportation cannot be regulated by a state but are subject to the exclusive regulation of the Federal Power Commission. The Phillips case, therefore, controls this one." 349 U. S. 44 at 44-45, 99 L. Ed. 866 at 867.

For these purposes it is of slight comfort to these states that, as *Panoma* plainly said, this was applied to a post-production and gathering sale. For the basis for the decision was the jurisdictional application of the Act. With the inexorable physical characteristic that traces molecules from Permian Basin to Queenstown Heights and joins body, fleece and tail to Mary's ubiquitous fabled lamb, wherever goes F. P. C. jurisdiction, so goes *Panoma*. There it was *after* gathering. Here it is at the wellhead before gathering is completed. The majority's decision takes us that far. Where can the states go? To the well-side of the Christmas tree? To the bottom of the well?

Wherever it is fixed is not far enough, nor may it ever be. For the thesis of the majority's opinion is to mix Boyles and *Phillips* law to come up with the startling legal-statutory interpretation law that because gas, once released is in a constant state of movement, that *movement*, from the very moment it first started, is characterized (intra or interstate) by its final destination. This means that if Oklahoma prescribes the price, as has Kansas,[8] as a condition precedent to the right of *withdrawal* of this valuable domestic resource, the sale of that gas *out* of the well—by which alone would there ever

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[8] Now pending before the Supreme Court with probable jurisdiction noted, 25 Law Week 3351, as No. 797, is the action of the Supreme Court of Kansas, *Cities Service Gas Company* v. *State Corporation Commission of Kansas*, 180 Kan. 454, 304 Pac. 2d 528, sustaining the action of the state regulatory agency in fixing the wellhead price for withdrawal of gas. Also pending are similar Oklahoma minimum price cases, see *Phillips Petroleum Company* v. *Oklahoma Corporation Commission*, Nos. 953-955, 25 L. W. 3346; *Michigan Wisconsin Pipe Line Company* v. *Corporation Commission of State of Oklahoma*, No. 809, 25 Law Week 3271.

be production at all—was of necessity *in interstate commerce,* and such sale and the movement of the gas occasioned by it would fall under *Panoma.*

Of course, I am not saying that this consequence makes the law invalid or unwise. I assume that Congress could within the broad compass of its constitutional powers over commerce do this very thing. But the fact, so often repeated is that "the Natural Gas Act did not envisage federal regulation of the entire natural-gas field to the limits of constitutional power. Rather it contemplated the exercise of federal power as specified in the Act, particularly in that interstate segment which the states were powerless to regulate because of the Commerce Clause of the Federal Constitution. The jurisdiction of the Federal Power Commission was to complement that of the state regulatory bodies. Accordingly, Congress in § 1(b) of the Act not only prescribed the intended reach of the Commission's power, but also specified the areas into which this power was not to extend," *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.,* 337 U. S. 498 at 502-503, 93 L. Ed. 1449 at 1504.

Avowedly using only a portion of its power, is it likely then that Congress meant to go this far? To think so is to attribute to them a collective ignorance of an already well-defined traditional policy in the states to regulate,[9] by regulating the price at which oil or gas could be sold, this important business. Indeed, so well recognized was such state policy that, in the setting of those days, it led to the passage of the Connally Hot Oil Act,[10] 15 USCA

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[9] As shown by both pre and post-1938 decisions, these state efforts had met with Federal constitutional approval: *Champlin Refining Co.* v. *Corporation Commission,* 286 U. S. 210, 76 L. Ed. 1062 (1932); *Railroad Commission* v. *Rowan & Nichols Oil Co.,* 310 U. S. 573, 84 L. Ed. 1368 (1940); and see, *Nebbia* v. *New York,* 291 U. S. 502, 78 L. Ed. 940 (1934).

[10] The Act had its origin in the Executive Orders promulgated July 11, 1933 and July 14, 1933, under the National Industrial

715 *et seq.* This Act gears interstate transportation of oil to state regulation. And at least everyone on the outside of a courtroom knows that modern oil-gas conservation programs, preventing waste by limiting production to meet an established market demand,[11] whether they do so directly or indirectly, actually fix prices. And there need be no apology for this. For the welfare of a state whose economy rests substantially on oil and gas has a vital interest in local legislative or governmental means of stabilizing such a business. "That a legitimate local interest is at stake * * * is clear. A state is justifiably concerned with preventing rapid and uneconomic dissipation of one of its chief natural resources," *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U. S. 179 at 187, 95 L. Ed. 190 at 202.

Ten cent oil in the early thirties produced, in East Texas as elsewhere, calamity.[12] With this history so fresh in its recollection, indeed, with like contemporary prob-

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Recovery Act. 48 Stat. 200, chap. 90, 15 USCA 710(a), and stricken down in the celebrated case of *Panama Refining Company* v. *Ryan*, 293 U. S. 388, 79 L. Ed. 446; see *United States* v. *Gilliland*, 312 U. S. 86, 94, 85 L. Ed. 598, 604. "The purpose of the Connally Act * * * is to aid the states in enforcing laws limiting the amount of oil permitted to be produced from wells in designated fields, by prohibiting shipment of excess oil produced * * * in interstate commerce * * *." *The President of the United States* v. *Skeen*, 5 Cir., 118 F. 2d 58, 59.

[11] That this takes collective action of the interested oil-gas producing states is reflected by Congressional approval of the creation and activities of the Interstate Oil and Gas Compact, see Interstate Compact to Conserve Oil and Gas, Aug. 27, 1935, c. 781, 49 Stat. 939, Extensions Aug. 10, 1937, c. 572, 50 Stat. 617; July 20, 1939, c. 337, 53 Stat. 1071; August 21, 1941, c. 400, 55 Stat. 666; July 7, 1943, c. 494, 57 Stat. 383; Interstate Oil and Gas Compact Joint Resolution, Aug. 28, 1951, c. 350, 65 Stat. 199.

[12] It led to what the Governor of Texas considered insurrection requiring declaration of martial law as recently enacted conservation laws were enjoined by Federal Courts. *Sterling* v. *Constantin*, 287 U. S. 378, 77 L. Ed. 375.

lems so much then a matter for its current consideration, it is beyond my belief to think that Congress thought that, by the inocuous language of § 1(b), it was letting loose a nascent force which either could, or would, or might completely alter a major business or thwart a major field of state regulation.

Chief Justice Vinson, recognizing in *Interstate Natural Gas Company* v. *Federal Power Commission*, 331 U. S. 682 at 690, 91 L. Ed. 1742, 1748, *supra*, that some sales "technically consumated in interstate commerce * * * are so closely connected with * * * local incidents * * * as to render rate regulation by the Federal Commission inconsistent or a substantial interference with the exercise by the State of its regulatory function, [and] the jurisdiction of the Federal Power Commission does not attach," showed great prescience.

Especially so, if, for example, the current holding and contention of the Federal Power Commission is followed [13] that the price for which independent producers may sell their gas to a pipe line is controlled by *City of Detroit* v. *Federal Power Commission*, D. C. Cir., 230 F 2d 810, cert. den. 352 U. S 829, 1 L. Ed. 2d 48. That case, with its emphasis on cost data as a part of a so-called rate base, points out that if a "fair-field" price is to be justified, it can be so only when it does not produce more than reasonably necessary to permit continued exploration for and development of gas reserves. That, in the light of the oft-repeated statement that "Protection of consumers against exploitation at the hands of natural-gas companies was the primary aim of the Natural Gas Act," *Phillips Petroleum Company* v. *Wisconsin*, 347 U. S. 672, 685, 98 L. Ed. 1035 at 1049, may mean that it is the positive duty of the Federal Power Commission aggressively to remand and then approve only the *lowest* rate. But the rate which is most favorable to consumers in Brooklyn, *ie.*, the *lowest* pos-

[13] We now have nine such cases pending on petition for review from the Federal Power Commission.

sible one, may run counter to, and could frustrate altogether, the domestic policy of Oklahoma,[14] or Kansas, or Texas, or New Mexico.

Again, I repeat, Congress could surely make the one subject to the other. But the question remains: where do we find a declaration of any such far-reaching purpose?

The holding of a jurisdictional sale at the wellhead does more than prohibit, and thus invade, state regulation. It affirmatively imposed substantial obligations of the most awesome kind which, although appropriate to utility regulation and within the conceded constitutional power of Congress, could hardly have been anticipated by Congress for application to a person engaged in the local activity of drilling and bringing in an oil or gas well. Here, we see that we cannot brush this aside, as does the majority as mere pessimistic hypothetical prophesies.[15] Holding,

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[14] In *Cities Service Gas Co.* v. *Peerless, supra,* at 340 U. S. 183, 95 L. Ed. 200, the Court pointed out that the Oklahoma "• • • Commission concluded that there was no competitive market for gas in the Guymon-Hugoton Field, that the integrated well and pipe-line owners were able to dictate the prices paid to producers without pipe-line outlets, and that as a result gas was being taken from the field at a price below its economic value. It further concluded that the taking of gas at the prevailing prices resulted in both economic and physical waste of gas • • •."

If long-line transmission pipe-lines by mere location and availability have that monopolistic power to drive down prices, what will their power be when, acquiring as a new and somewhat unusual ally, the Federal Power Commission, the two move jointly together to drive prices down further in the name of consumer public interest? What does Oklahoma do in the meantime? What happens to its landowner royalty owners, its oil companies, its banks, its public treasury?

[15] In *Deep South*, the Court says: "Petitioner argues, however, that what is involved here is 'more than merely regulation of sales,' for the reason that our decision herein will give rise to certain hypothetical situations predicated upon assumed future actions by the Commission, *viz.*, that should certificates of public convenience and necessity which petitioner will apply for be refused, Deep South must close its wells and suspend operations, and

itself sets in train a whole series of requirements which makes it plain that when the wildcatter spuded in, he may have thought himself a free enterpriser in the American tradition, but when the well comes in and the gas is sold to a person who sells it to another who sells it to a pipe line who transports it to a distributing company who sells it to a homeowner, he has become a public utility.

For the Court to say "no such issues are presented in the instant case, and it will be time enough to pass upon those issues if and when they are properly presented" is to forget so soon what we struggled with a year ago in *Magnolia Petroleum Company* v. *Federal Power Commission*, 5 Cir., 236 F. 2d 785, cert. den. 352 U. S. 968, 1 L. Ed. 2d 322, and the related cases where the series 174, 174A, 174B Order [16] cases were under review Not here concerned with the validity of those regulations and accepting them for what they state, these regulations with their injunctive and criminal sanctions under Sections 20, 21(a), 15 USCA § 717s, § 717t(a), compel definitive action. They compel it now. Noncompliance subjects the independent producer to penalties now. Under Section 157.23(a) the Order requires an application for certificate of public convenience and necessity and, once obtained with service performed, Section 157.28 forbids abandonment of any sale or service without the express permission and approval of the Commission, *J M. Huber Corporation* v *Federal Power Commission*, 3 Cir., 236 F. 2d 550, cert. den. 352 U. S 971, 1 L. Ed 2d 324

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that petitioner must obtain the Commission's permission before discontinuing sales from a well which has been found subject to Federal jurisdiction. No such issues are presented in the instant case, and it will be time enough to pass upon those issues if and when they are properly presented."

[16] See my dissent, *Magnolia Petroleum Company* v. *Federal Power Commission*, 236 F. 2d 785 at 793, especially Part 1, page 797 through 808, which sets forth these regulations and describes their operation in detail.

For an industry which has been built upon the inveterate, irrepressible, sometimes flamboyant, optimism of people anxious to take great risks to reap great rewards, suddenly to make out of it the staid and conservative business of a public utility, represents such a radical abandonment of the past that I cannot believe that Congress meant to do this to the thousands who annually bring, or try to bring, or hope to bring, in gas and oil wells. Especially is this so since the making of the very first sale which allows a molecule to make an interstate journey subjects that operator permanently to the jurisdiction of a remote agency until he can prove himself entitled to be freed. Even more so since those very same Orders prescribe that he cannot make any changes in the price which he is willing to sell his gas without first filing, as required under Section 154.92(a), a rate schedule and proving his right to it. And that very same Order, Section 154.94, as does the consistent administrative practice of the Commission, forbids either the use or application of automatic contract step-up rate escalation clauses. The operation of those Orders in the context of the Act under Sections 4 and 5, 15 USCA 717c, 717d, exposes the operator to the possibility of an irretrievable loss by suspension for the maximum period of five months, *Humble Oil & Refining Company* v. *Federal Power Commission*, 5 Cir., 244 F. 2d 315 [7 cases]; *Sun Oil Company* v. *Federal Power Commission*, 5 Cir., 244 F. 2d 77. They subject the operator to the burden of proving as just and reasonable any proposed increase And they expose him all the time to the likelihood that under Section 5 the Commission may determine that what he and his purchaser have agreed to, either in initial rates or those subsequently filed and approved, now produces an unjust and unreasonable rate which can no longer be collected.

I would think that when the Congress sets out radically

to change a local free enterprise business [17] to that of a regulated utility, it would do so in unmistakable terms. I would think that it would not only say so, but prescribe as well adequate machinery [18] for the fulfillment of such

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[17] As of December 31, 1954, there were 511,200 producing wells. During 1954, in addition to 29,773 oil wells and 19,169 dry holes, 3,977 gas wells were brought in. Statistical Abstract of the United States 1956, page 741.

[18] To those of us dealing with these cases since the *Phillips* decision, the effort of the Commission and its overburdened staff to assimilate and handle the thousands of applications for certificates of public convenience and necessity, for rate increases, etc., can evoke only the most sympathetic appreciation for a problem for which it was not equipped by Congress. In October 1954 there were some 2,100 rate filings with 9,702 being received in January 1955.

Of more fundamental significance than the Congressional omission of the working tools (an adequate staff and budget) is the complete failure to prescribe the tools of substance, *i.e.*, the standards to be applied for utility rate making in this field. The Commission immediately recognized this by its Order instituting Docket R-142 under the revealing Heading of "Consideration of principles and Methods to be Applied in the Fixing of Rates to be Charged by Independent Producers for Natural Gas Sold in Interstate Commerce for Resale" which stated:

> "2. Necessary to a determination of the rates permitted by the Natural Gas Act to be made, demanded or received by a natural-gas company is the choice of methods to be used in determining the just and reasonable rate for any particular sale. The Commission, recognizing the basic differences between the operations of a producer and those of a pipe-line company, is desirous of securing any information, suggestions or proposals bearing upon the possible effect the several approaches might have upon the public interests towards which the Natural Gas Act is directed.
>
> "3. The Commission, therefore, is inviting the submission of suggestions as to the principles and methods to be applied by it in its regulation of the rates to be charged by independent producers for the transportation or sale of natural gas subject to the jurisdiction of the Commission. * * *
>
> "4. This is a matter of national importance and the Com-

an undertaking, I would have thought that such a spectacular purpose would be soon evident and would not take eighteen years to discern.

In this analysis I have concentrated upon the searching out of Congressional intent. In that process, I think the so-called specific exemption of production and gathering is to be read as a part of § 1(b) and not treated as though it stood alone. In that process, also, there are other aids advanced by the parties which point significantly in this direction.

At the outset it is significant that this is an "*in* interstate" commerce Act not one "*affecting*"[19] interstate

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mission invites members of the industry, producers, gatherers, interstate pipe-line companies, distributors, consumers, groups and associations representative thereof, State commissions, municipalities, and any other interested persons to submit information, data, views, comments or suggestions in writing concerning the problem. • • •"

But the hearing could hardly supply what the statute omitted, so it was not surprising that after hearings in R-142 scheduled in December 1954 and held at various times in 1955, the Commission by order December 1, 1955, terminated R-142 with this significant finding:

"• • • the information gained in this proceeding, convinces us that, on the basis of the record herein, we should not lay down any rules as to what would be necessary or appropriate for consideration in determining the just and reasonable rates of any independent producer subject to our jurisdictio under the Natural Gas Act.

"Accordingly, after full consideration of the suggestions, comments, and recommendations submitted, it appears to the Commission that adoption of any standards, principles, or methods respecting the matters and issues involved herein is not appropriate or necessary in carrying out the provisions of the Natural Gas Act. We so find."

[19] *Cf.* for example other regulatory statutes passed prior to or contemporaneously with the Natural Gas Act: The Fair Labor Standards Act of 1938 (Act of June 25, 1938, 52 Stat. 1060, 29 USCA 201, 206), extended Federal regulation to conditions of

commerce. The test then is not how much Congress covered, but rather how much of a field which it deliberately limited did it intend to cover. *Federal Trade Commission* v. *Bunte Bros. Inc.*, 312 U. S. 349, 85 L. Ed. 881 The legislative history[20] indicates that the "in interstate"

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employment "in the production of goods for commerce. The Bituminous Coal Act of 1937 (Act of April 26, 1937, 50 Stat. 72) applied Federal authority to matters directly "affecting" interstate commerce. The National Labor Relations Act (Act of July 5, 1935, 49 Stat. 49, 29 USCA 141), imposed regulation upon matters "affecting" interstate commerce.

[20] One of Petitioner's briefs concisely traces this history:

As originally introduced, the bill which became the Natural Gas Act defined the scope of the Commission's jurisdiction in these words [H. R. 4008, 75th Cong., 1st sess. (1937)]:

> "The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale of *such* natural gas for resale to the public, and to natural-gas companies engaged in such transportation or sale • • •" (emphasis supplied).

Similarly, § 2(5) of the original version of the bill contained this definition of "natural-gas company":

> " 'Natural-gas company' means a person engaged in the transportation of natural gas in interstate commerce, or the sale of *such* gas for resale to the public" (emphasis supplied).

During hearings, objection was raised to the failure of the bill to "confine jurisdiction to gas sold in interstate commerce." [Hearings before the House Committee on Interstate and Foreign Commerce on H. R. 4008, 75th Cong., 1st sess., pp. 103-105 (1937)] The objecting witness, Mr. Russell G. Hunt, then offered the following amendment to § 2(5):

> " 'Natural-gas company' means a person engaged in • • • the sale in interstate commerce of such gas for resale to the public."

Without material change, this amended definition, together with a corresponding change in § 1(b), appeared in the bill as favorably reported out by the House Comittee, [H. R. 6586 (1937) and H. Rept. No. 709, 75th Cong., 1st sess. (1937)] and in the same form in the Act as passed.

See also *Federal Power Commission* v. *Panhandle Eastern Pipe Line Copany*, 337 U. S. 498, 512, 513, footnote 16, 93 L. Ed. 1499 at 1509.

commerce standard was articulately adopted to determine what "sales" were covered.

And since "commerce among the states is not a technical legal conception, but a practical one, drawn from the course of busines," *Swift & Company* v. *United States*, 196 U. S. 375, 398, 49 L. Ed. 518, 525, and "We must accordingly mark the beginning and end of a particular kind of interstate commerce by its own practical consideration," *United States* v. *Yellow Cab Company*, 332 U. S. 218, 231, 91 L. Ed. 2010, 2020, the test cannot be the simple one of the physical property of gas which keeps it in constant movement from the bottom of the well to the burner tip. " 'Practical continuity' does not always make an act a part of interstate commerce," *Southern Pacific Co.* v. *Gallagher*, 306 U. S. 167 at 177, 83 L. Ed. 586 at 593. This is so since with casinghead gas the sales precede local processing which is essential to extract the valuable economic components of it and to prepare the gas for its interstate transmission and use as fuel The procesing itself is a local or intrastate activity and can hardly be regarded as being "in" interstate commerce.[21] That the commodity almost certainly, or even inevitably, will be shipped out of the state does not make all of the activity interstate commerce even though it is done in the course of a part of that movement.[22]

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[21] See *Crescent Cotton Oil Company* v. *Mississippi*, 257 U. S. 129, 66 L. Ed. 166; *Parker* v. *Brown*, 317 U. S. 341, 360-361, 87 L. Ed. 315, 331; *Federal Compress & Warehouse Company* v. *McLean*, 291 U. S. 17, 78 L. Ed. 622; *Chassaniol* v. *Greenwood*, 291 U. S. 584, 78 L. Ed. 1004.

[22] See *Coe* v. *Errol*, 116 U. S. 517, 525, 29 L. Ed. 715, 718; *Superior Oil Co.* v. *Mississippi*, 280 U. S. 390, 74 L. Ed. 504; *Empresa Siderurgica S. A.* v. *County of Merced*, 337 U. S. 154, 157, 93 L. Ed. 1276, 1280; *Department of Treasury of Indiana* v. *Wood Preserving Corporation*, 313 U. S. 62, 85 L. Ed. 1188; *Southern Pacific Co.* v. *Gallagher*, 306 U. S. 167, 83 L. Ed. 586; *Atlantic Coast Line Railroad Co.* v. *Standard Oil Company*, 275 U. S. 257, 72 L. Ed. 271; *Oliver Iron Mining Company* v. *Lord*,

In my approach to this matter, I treat these, and the contrary ones urged by the Commission,[23] as aids only. Dealing, as they do, with logs, iron ore, cotton, and the like, they hardly fit the fugitive expansive nature of gas. And, I do not attempt here to assert or explore their final, legal, decisive significance since they may be of "* * * that class of cases [in which] the question is not with respect to the extent of the power of Congress to protect interstate commerce, but whether a particular exercise of state power in view of its nature and operation must be deemed to be in conflict with that paramount authority," *Santa Cruz Fruit Packing Company* v. *NLRB*, 303 U. S. 453 at 466, 82 L. Ed. 954 at 960. But I do think they offer some relevant assistance in attempting to assay what Congress, familiar generally with legal concepts applied in this field throughout the years, could have had in mind.

But I do think we must recognize that, as in the situation which I analyzed in detail in which the state is deprived of the right to regulate the price of gas, current authoritative decisions also withdraw a substantial part of the gas business and the gas produced from the area of state taxation permitted in so many of these cases cited in notes 22 and 23, *supra*. In *Michigan-Wisconsin Pipe Line Company* v. *Calvert*, 347 U. S. 157, 98 L. Ed 583, the Court unanimously held that a Texas tax, applicable on gas at the outlet of an independent gasoline plant as it flows into the lines connecting with an interstate transmission system, violates the Commerce Clause. Of course,

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262 U. S. 172, 67 L. Ed. 929; *Utah Power & Light Company* v. *Pfost*, 286 U. S. 165, 76 L. Ed. 1038; *Arkadelphia Milling Company* v. *St. Louis S. W. R. Co.*, 249 U. S. 134, 63 L. Ed. 517; *Crescent Cotton Oil Company* v. *Mississippi*, 257 U. S. 129, 66 L. Ed. 166; *Hesler* v. *Thomas Colliery Company*, 260 U. S. 245, 259, 260, 67 L. Ed. 237, 243.

[23] See, *e.g.*, *Shafer* v. *Farmers Grain Company*, 268 U. S. 189, 69 L. Ed. 909; *Lemke* v. *Farmers Grain Company*, 258 U. S. 50, 66 L. Ed. 458; *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, 66 L. Ed. 239.

on the principle of *Panoma* to the extent that the jurisdictional sales go to the wellhead or beyond, the movement [24] effected by such sales is in interstate commerce and must likewise be removed from state taxation under *Calvert*. This means that at least to some extent tax cases are pertinent and in any event, this points up another consequence of a startling kind not shown to have been within Congressional contemplation.

These problems like the question of whether casinghead is "natural gas" and whether the sale is for "resale" or for a manufacturing process and later resale cannot be determined by artificial, mechanical standards, dictionary definitions or, equally unauthoritative, judge-made definitions of some physical or scientific phenomenon.

The Act carefully limits it to the sales for resale of natural gas. It is uncontradicted that what is sold is *something* other than the fuel gas which ultimately goes into the transmission lines. Presumably the purchasers buy this casinghead gas for *all* of its constituent elements. Indeed, in the case of Shell, the contract between it and Phillips began in 1938. It was not until July 1950 that any part of the residue gas sold by Phillips to El Paso Natural Gas. Until 1950 the residue gas was continuously flared. What did Phillips buy during these twelve years? What

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[24] *Calvert* puts it in terms of movement, *i.e.*, transportation

"The problem in this case is not whether the State could tax the actual gathering of all gas whether transmitted in interstate commerce or not, cf. Hope Natural Gas Co. v. Hall, 274 US 284, 71 L ed 1049, 47 S Ct 639, supra, but whether here the State has delayed the incidence of the tax beyond the step where production and processing have ceased and transmission in interstate commerce has begun. * * *" *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U. S. 157 at 166-167, 98 L. Ed. 583 at 592.

If the mechanical-physical movement test is decisive, it is difficult to see why the author and two Associate Justices would soon dissent in *Phillips*.

did Shell sell during these twelve years? What made it change merely because Phillips found a new use or outlet in 1950? Obviously Phillips bought casinghead gas for the valuable liquefiable hydrocarbons (natural gasoline, butane and propane). These are still a major constituent of what they buy. The same is true in the other cases.

If the purchaser buys the gas for its *multiple* use, does not the producer sell for the same purposes. As to casinghead gas, the sale then is for (1) the extraction of valuable liquefiable hydrocarbons, (2) the removal of all valuable hydrocarbons, (3) the processing to eliminate impurities and (4) the sale of the residue to a pipe line company for resale. Now a sale for all four purposes is not a sale for one. And yet the Act itself defines the jurisdictional sale as "a sale in interstate commerce of natural gas for resale for ultimate public consumption" and then categorically states that the Act "shall not apply to *any other* * * * *sale* of natural gas."

Does not the very difficulty of attempting to define each of these operations as "processing" or "manufacturing" or analogize gas to a dead chicken, frozen or otherwise, *East Texas Motor Freight Lines, Inc.* v. *Frozen Food Express*, 351 U. S. 49, 52, 54, 100 L. Ed. 917, 922-923, 924, and the uncontradicted fact that the sales had a substantial purpose other than ultimately making fuel gas available for transmission and delivery to consumers, suggest further that sales "in interstate commerce for resale" was meant by Congress to be those effected after such

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[25] For example, the gasoline plant extracts the butane and propane from the natural casinghead gas. This is reduced to a liquid state under pressure and is distributed, as it now is widely, to communities not served by pipe lines. This very same propane, butane is then resold for "ultimate public consumption for domestic, commercial, industrial * * *" and other uses. Since, on the Commission's and Court's chemical-legal standards, it is still natural gas as the only change is from a gaseous to a liquid state, and there is no change in molecular structure, is the sale by the

processing was completed? Here, as nearly always, the literal [25] test cannot be applied. For "* * * even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words," *United States* v. *American Trucking Associations*, 310 U. S. 534 at 543, 84 L. Ed. 1345 at 1350.

I end as I began: could Congress have intended all of these things? Because I think not, I must respectfully dissent.

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gasoline plant a sale of "natural gas for resale"? Is the sale by a statewide distributing company to local distributors such a sale? Likewise, suppose Shell sold the *oil* at the wellhead to a purchaser who in turn had sold the casinghead gas to Phillips, who had in turn sold the residue gas to El Paso. Is that original wellhead sale of the oil, carrying inevitably with it the casinghead gas from which all blessings and jurisdiction flow, a sale of natural gas? If not, why not? And if, as the Court holds, the Commission can establish the price which Texas Gas must pay to Deep South where Deep South's volume is but 5% of Texas Gas requirement and its output moved 95% intrastate and 5% interstate, why cannot the Commission fix the price for each barrel of this gas bearing, gas carrying oil?

Opinion and Order Affirming Examiners Decision

UNITED STATES OF AMERICA, FEDERAL POWER COMMISSION

Opinion No. 284

In the Matters of: DEEP SOUTH OIL COMPANY OF TEXAS, HUMBLE OIL & REFINING COMPANY, SHELL OIL COMPANY

Docket No. G-2952
Docket No. G-5261
Docket No. G-4671

Adopted: September 2, 1955.
Issued: September 9, 1955.

Before Commissioners: JEROME K. KUYKENDALL, Chairman; CLAUDE L. DRAPER, SEABORN L. DIGBY, FREDERICK STUECK and WILLIAM R. CONNOLE.

APPEARANCES:

For Deep South Oil Company of Texas: Hugh B. Cox, Esquire, Washington, D. C.; Newell Ellison, Esquire, Washington, D. C.; Harold Willcox, Esquire, Washington, D. C.; Richard L. Fruchterman, Esquire, New York, N. Y.; George Buschmann, Esquire, Washington, D. C.

For Shell Oil Company: Oliver L. Stone, Esquire, New York, N. Y.; R. H. Whilden, Esquire, Houston, Texas; David T. Searls, Esquire, Houston, Texas.

For Kansas Natural Gas, Inc.: Dale E. Doty, Esquire, Washington, D. C.; Norman E. Duke, Esquire, Washington, D. C.; Norman W. Teter, Esquire, Hays, Kansas.

For Humble Oil & Refining Company: Carl Illig, Esquire, Houston, Texas; Rex G. Baker, Esquire,

Houston, Texas; Nelson Jones, Esquire, Houston, Texas; Bernard Foster, Jr., Esquire, Washington, D. C.

For Texas Gas Corporation: William N. Bonner, Jr., General Counsel, Houston, Texas; Richard J. Connor, Esquire, Washington, D. C.; Christopher T. Boland, Esquire, Washington, D. C.; John T. Miller, Jr., Esquire, Washington, D. C.; George J. Meiburger, Esquire, Washington, D. C.

For the Staff of the Federal Power Commission: William J. Grove, Esquire; Pheobe Eppes Gordon, Attorney.

Upon consideration of the entire record in these proceedings, including the testimony and evidence adduced at the hearings which were concluded on January 10, 1955, briefs filed by all the parties and Staff Counsel, the decision of the Presiding Examiner, issued April 5, 1955, exceptions thereto and the oral argument thereon, held on June 13, 1955, we affirm the aforesaid decision of the Presiding Examiner.

In view of the fact that in these matters there is presented for the first time the question whether a sale of natural gas made before the completion of "production and gathering" (even though it was conceded that such was otherwise a sale in interstate commerce) is exempt from the Natural Gas Act (Act) by reason of the exclusionary provisions of Section 1(b) of the Act, we deem it desirable to set forth the reasons for our affirmance.

The Petitioners, Deep South Oil Company of Texas (Deep South), Humble Oil & Refining Company (Humble) and Shell Oil Company (Shell), while maintaining that their sales of natural gas are not in fact sales in interstate commerce, nevertheless claim, if their sales are found to be in interstate commerce, that the sales in question are exempt under Section 1(b).

Petitioners, Shell and Humble, further contend that their sales are sales of "casinghead gas" which is not the same product as the surplus residue gas, which they claim, is the "natural gas unmixed" to which Congress referred in the definition of natural gas in Section 2(5) of the Act.

Section 1(b) of the Act provides, in pertinent part, as follows:

The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial or any other use, and to natural-gas companies engaged in such transportation and sale, but shall not apply to any other transportation or sale of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

As defined in Section 2 of the Act:

"Natural gas" means either natural gas unmixed, or any mixture of natural gas and artificial gas;

"Natural-gas company" means any person engaged in the transportation of natural gas in interstate commerce or the sale in interstate commerce of such gas for resale.

There is no merit to the claim that casinghead gas is not natural gas. The Examiner effectively answered all such claims, but it may be added that other Court cases confirm his conclusions.

In *Mississippi River Fuel Corporation* v. *Federal Power Commission*, 121 F. 2d 159, Mississippi River Fuel Corporation (Mississippi) claimed that the gas which it delivered for its purchasers is not resold for public consumption because its Purchasers, Illinois Iowa Power and Laclede Gas Companies, use it as an ingredient of a mixture which, in turn, is resold to the ultimate consumer. Mississippi urged that the resulting product burned by the consumer had only a slight similarity to natural gas.

In disposing of this contention, the Court at page 164 of its decision stated:

Natural gas is not only the gas as transported and sold, but by statutory definition natural gas is any mixture of natural and artificial gas, and hence, the send-out product as sold by the Illinois Iowa Power Company and the Laclede Gas Company is natural gas within the meaning of this act. While the natural gas resold may not be the same in identical substance as that transported, yet Congress clearly intended to regulate transactions such as here considered. It has used language appropriate to carry out that purpose. To construe the statute as contended by petitioner would limit it to so restricted a field of operation as to thwart the purpose of Congress and render the act impotent.

See also *Natural Gas Pipeline Co. of America* v. *Panoma Corporation,* 271 P. 2d 354.

Furthermore, Petitioners' sales are sales in interstate commerce for resale for ultimate public consumption and, as held by the Presiding Examiner, such sales are not within the exclusionary provisions of Section 1(b) of the Act.

The pertinent facts of record are set forth in the Examiner's decision, and although not repeated here, they show that there is an uninterrupted flow of natural gas from the wells of Deep South, Shell and Humble across State lines.

The Presiding Examiner in his initial decision refers to the testimony by Humble's principal witness, Ralph J. Schilthius, as being "sketchy and inconclusive" with respect to the movement of such gas in interstate commerce (p 56 mimeographed copy of decision). We have carefully reviewed that testimony and to us it seems most conclusive We so find. This Humble witness testified in answer to questions by Humble's counsel, that he checked with the plant operators through whose plants Humble's gas was processed and found:

(1) That the natural gas in question and sold by Humble was commingled in the processing plants with natural gas from other sources.

(2) That the commingled gas in whole or in part was sold by the plant operators to interstate pipe lines which transported that gas across State lines for ultimate public consumption.

A definite check by Humble's principal witness with plant operators as to the ultimate disposition of the commingled stream of natural gas of which Humble's gas was a part and which so satisfied Humble's witness that he was willing to testify under oath and adversely to Humble's contention and interest, as manifest in this case, cannot be taken as other than conclusive. It may well be that the testimony is not extensive nor overly detailed, but it represents the considered judgment and opinion of the witness presented by Humble respecting the ultimate disposition of the natural gas and the gas sales contracts, with which we are here concerned. We think that extended and prolix testimony could not have more decisively stated the facts than were stated in short form by this witness in the manner in which he testified.

Hence, we find that the natural gas which is sold by the Petitioners is sold in interstate commerce. The conclusion expressed in *Interstate Natural Gas Co., Inc.* v. *Federal Power Commission,* 331 U. S. 682, 688 is particularly pertinent here: "Clearly the sales in question [are] a part of commerce being carried on between points in [New Mexico and Texas] and points in other States."

We are cognizant that the following underlined language, appearing at page 685 of the *Interstate* decision raises the question whether storage or processing interrupts the continuous flow of the natural gas from the wells across the State line:

The entire movement of the gas from the wells to the purchasing companies through the compressor pumps and

across the state line is a continuous process *without interruption for storage, processing or for other purposes.*

As far as these Petitioners are concerned, there is no storage but there is processing. In every processing operation through a gasoline plant, dehydration plant or desulphurizing plant the movement of gas is uninterrupted and continuous. The gas moves into the plant in a continuous stream and flows out of the plant in an equally continuous volume. The only reduction in volume results from the removal of various elements in the process.

Moreover, the Supreme Court in *Eureka Pipe Line Co.* v. *Hallanan*, 257 U. S 265, and *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U. S. 157, have dispelled any doubt as to that question by holding that storage and processing do not interrupt the continuous movement in interstate commerce.

In the *Michigan-Wisconsin* case the facts were stated by the Court at page 163 of its decision as follows:

After the gas has been taken into the Michigan-Wisconsin pipes, it flows a distance of approximately 1,215 feet to a compressor station owned and operated by Michigan-Wisconsin, at which station the pressure of the gas is raised from about 200 lbs. to some 975 lbs. to facilitate movement to distant markets. In the course of its flow through this station the gas is compressed, cooled, scrubbed and dehydrated and then passes into a 24-inch pipeline which carries it 1.74 miles to the Oklahoma border and thence to markets outside Texas. Aditional motive power is furnished by 15 other compressor stations in other states through which the gas is transported.

The entire movement of the gas, from producing wells through the Phillips gasoline plant and into the Michigan-Wisconsin pipeline to consumers outside Texas, is a steady and continuous flow.

With respect to the flow of such gas, notwithstanding the scrubbing and dehydrating, the Court at page 167 of its decision stated as follows:

There is no break, no period of deliberation, but a steady flow ending as contemplated from the beginning beyond the state line. *United Fuel Gas Co.* v. *Hallanan*, 257 U. S 277, 281 . . .

The above statement of the Court is an apt description of the flow of the natural gas in the instant proceedings.

Even if only a portion of the gas from the Petitioners' wells crosses the State line as an integral part of a commingled mass, it is immaterial for it has been said that the smallness of the operation in interstate commerce does not take it out of the sphere of Federal jurisdiction. *Valvoline Oil Co.* v *United States*, 308 U. S 141; *Jersey Central Power and Light Co.* v. *Federal Power Commission*. 319 U. S. 61

Furthermore, the fact that the Petitioners had no control over the gas after it was sold to the gatherers or processors and that they may have been indifferent as to whether any of the gas moved in interstate commerce is not controlling on the question of whether their sales are in interstate commerce. Where the question of intent is brought into issue, such intent relates to past transaction. However, where upon investigation it is found that the sales and movement in question are generally in interstate commerce, and the inquiry relates to future operations, *the facts and not intent are conclusive*. Nor is it necessary for any of the Petitioners to intend to sell their gas in interstate commerce. Even reasonable anticipation that the gas flows in interstate commerce is sufficient. *Bracht* v. *San Antonio & A. P. R. Co.*, 254 U. S. 489. In view of the factual situation, as found by the Presiding Examiner, and confirmed by us, each of the Petitioners has knowledge that the gas it was, and is, selling in the field enters into interstate commerce. That is true not only with respect to the direct sales to the pipe lines but also with respect to the sales to the gatherers and their plant operators. The Petitioners know to whom they are selling and that the sales by their purchasers are sales of gas which move in interstate commerce.

When the gas was sold by Petitioners, it commenced its journey in interstate commerce. Nothing further remained to be done by the petitioners after those sales. Thus *Coe* v. *Erol*, 116 U. S. 571; *Oliver Iron Mining Co.* v. *Lord*, 262 U. S. 172; and *Chassanoil* v. *Greenwood*, 291 U. S. 584 are not applicable to the facts before us.

We also confirm the Presiding Examiner's determination that the sales in question are sales in interstate commerce for resale and not for manufacture. Accordingly, the sales by each of the Petitioners is a sale in interstate commerce for resale.

The fact that the gas was sold by the Petitioners to an intermediary such as a gatherer or gasoline plant which, in turn, resold the gas in interstate commerce, does not affect our finding and conclusion. It is apparent from *Phillips Petroleum Co.* v. *Wisconsin*, 347 U. S. 672, 681-685, Congress intended that sales of the type in question should be subject to Federal regulation and not limited to sales by pipelines to distributors. At page 682 of its decision, the Court stated:

In general, petitioners contend that Congress intended to regulate only the interstate pipeline companies since certain alleged excesses of those companies were the evil which brought about the legislation. If such were the case, we have difficulty in perceiving why the Commission's jurisdiction over the transportation *or* sale for resale in interstate commerce of natural gas is granted in the disjunctive. It would have sufficed to give the Commission jurisdiction over only those natural-gas companies that engage in "transportation" or "transportation *and* sale for resale" in interstate commerce, if only interstate pipeline companies were intended to be covered.[10] See *Federal Power Commission* v. *East Ohio Gas Co.*, 338 U. S. 464 . . . Rather, we believe that the legislative history indicates a congressional intent to give the Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after

transportation by an interstate pipeline company.[10] There can be no dispute that the overriding congressional purpose was to plug the "gap" in regulation of natural-gas companies resulting from judicial decisions prohibiting, on federal constitutional grounds, state regulation of many of the interstate commerce aspects of the natural-gas business. A significant part of this gap was created by cases holding that "the regulation of wholesale sales of gas and electric energy moving in interstate commerce is beyond the constitutional power of the States." *Interstate Natural Gas Co.* v. *Federal Power Com., supra*, (331 U. S. at 689). The committee reports on the bill that became the Natural Gas Act specifically referred to two of these cases and to the necessity of federal regulation to occupy the hiatus created by them, thus, we are satisfied that Congress sought to regulate wholesales of natural gas occurring at both ends of the interstate transmission systems.

Petitioners cite our recent decisions in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U. S. 179; . . . 71 S. Ct. 215, and *Phillips Petroleum Co.* v. *Oklahoma*, 340 U. S. 190; . . . 71 S. Ct. 221, as authority for the proposition that the states may regulate the sales in question here and, hence, that such sales are not within the gap

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[10] Just such wording was suggested to and rejected by the House Committee considering enactment of the Natural Gas Act, by the Chairman of the State of New York Department of Public Service, Public Service Commission. Hearings before House Committee on Interstate and Foreign Commerce on H. R. 4008, 75th Cong., 1st Sess. 146-147. An earlier bill, H. R. 11662, 74th Cong. 2d Sess., would have limited the jurisdiction of the Power Commission to "the transportation of natural gas in high pressure mains in interstate commerce and to natural-gas companies engaged in such transportation . . ." Much of the legislative history advanced in support of petitioners' position was developed in conjunction with this bill, including the testimony of Dozier A. De Vane, Solicitor of the Federal Power Commission. Because of the much different jurisdictional provision of H. R. 11662, such testimony has little relevance here.

which the Natural Gas Act was intended to fill. Those cases upheld as constitutional state *minimum* price orders, justified as conservative measures, applying to sales of natural gas in interstate commerce. But it is well settled that the gap referred to is that thought to exist at the time the Natural Gas Act was passed, and the jurisdiction of the Commission is not affected by subsequent decisions of this Court which have somewhat loosened the constitutional restrictions on state activities, affecting interstate commerce, in the absence of conflicting federal regulation. *Illinois Natural Gas Co.* v. *Central Illinois Public Service Co.*, 314 U. S. 498, 508; . . . 62 S. Ct. 384; *Federal Power Com.* v. *East Ohio Gas Co., supra* (338 U. S. at 472). The Federal Power Commission did not participate in the *Cities Service* and *Phillips Petroleum* cases, the appellants there did not assert a possible conflict with federal authority under the Natural Gas Act, and consequently we expressly refused to consider at that time "[w]hether the Gas Act authorizes the Power Commission to set field prices on sales by independent producers, or leaves that function to the states . . ." 340 U. S. at 188, 189.

Regulation of the sales in interstate commerce for resale made by a so-called independent natural-gas producer is not essentially different from regulation of such sales when made by an affiliate of an interstate pipeline company. In both cases the rates charged may have a direct and substantial effect on the price paid by the ultimate consumers. Protection of consumers against exploitation at the hands of natural-gas companies was the primary aim of the Natural Gas Act. *Federal Power Com.* v. *Hope Natural Gas Co., supra,* (320 U. S. at 610). Attempts to weaken this protection by amendatory legislation exempting independent natural-gas producers from federal regulation have repeatedly failed, and we refuse to achieve the same result by a stained interpretation of the existing statutory language.

We wish to make it clear that our affirmance of the Presiding Exhaminer's Decision is not predicated upon

the existence or absence of state regulation with respect to wellhead prices. The degree of state regulation and state opposition to Federal control is not determinative of our jurisdiction over the sales in question. *Interstate Natural Gas Co., Inc.* v. *Federal Power Commission, supra,* and *Phillips Petroleum Co.* v. *Wisconsin, supra.*

At pages 690-1 of its decision in the *Interstate* case, the Court stated:

Clearly, among the powers thus reserved to the States is the power to regulate the physical production and gathering of natural gas in the interests of conservation or of any other consideration of legitimate local concern. It was the intention of Congress to give the States full freedom in these matters. Thus, where sales, though technically consummated in interstate commerce, are made during the course of production and gathering and are so closely connected with the local incidents of the process as to render rate regulation by the Federal Power Commission inconsistent or a substantial interference with the exercise by the State of its regulatory functions, the jurisdiction of the Federal Power Commission does not attach. But such conflict must be clearly shown. Exceptions to the primary grant of jurisdiction in the section are to be strictly construed. It is not sufficient to defeat the Commission's jurisdiction over sales for resale in interstate commerce to assert that in the exercise of the power of rate regulation in such cases local interests may in some degree be affected.

At page 681 of its decision in the *Phillips* case, the Court stated:

The *Interstate* case is also said to be distinguishable in that it did not involve an asserted conflict with State regulation, and federal control was not opposed by the State authorities, while in the instant cases there are said to be conflicting State regulations, and federal jurisdiction is vigorously opposed by the producing States.

The short answer to this contention is that the jurisdiction of the Federal Power Commission was not intended to vary from State to State, depending upon the degree of State regulation and State opposition to federal control. We expressly rejected any implication to the contrary, in the *Interstate* case, 331, U. S., at 691-692. See *Federal Power Commission* v. *Hope Natural Gas Co.* • • •

Thus, it is obvious from the foregoing that our jurisdiction is not predicated upon the existence or lack of State regulation.

Our conclusions herein are fully supported by the decisions of the Supreme Court, particularly the *Phillips* case, 347 U. S. 672. In that case the Court made it plain that a sale in interstate commerce for resale within the meaning of the Natural Gas Act related to wholesale sales or sales in bulk, such as sales to interstate pipe line companies. There, in dealing with the contention that sales during production and gathering were not sales in interstate commerce within the meaning of the Act, the Court said:

• • •, we believe that the legislative history indicates a Congressional intent to give the Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company.

Further in the same decision at page 684, the Court makes is clear that any language in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U. S. 179, or *Phillips Petroleum Co.* v. *Oklahoma*, 340 U. S. 190, was not to be interpreted as contrary to its conclusions and findings therein. At page 684 the Court makes that certain by stating:

Petitioners cite our recent decisions in *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U. S. 179, and *Phillips Petroleum Co.* v. *Oklahoma*, 340 U. S. 190, as authority for the proposition that they may regulate the sales in question here and, hence, that such sales are not within

the gap which the Natural Gas Act was intended to fill, * * * The Federal Power Commission did not participate in the *Cities Service* and *Phillips Petroleum* cases, the appellants there did not assert a possible conflict with federal authority under the Natural Gas Act, and consequently we expressly refused to consider at the time "[w]hether the Gas Act authorizes the Power Commission to set field prices on sales by independent producers, or leaves that function to the States . . ." 340 U. S., at 188-189.

The Supreme Court in its most recent pronouncement in *Natural Gas Pipeline Co.* v. *Panoma Corporation, et al.*, 349 U. S. 44, reaffirmed its prior decisions by holding:

We disagree with the contention of the appellees that *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U. S. 179, and *Phillips Petroleum Co.* v. *Oklahoma*, 340 U. S. 190, are applicable here. In those cases we were dealing with constitutional questions and not construction of the Natural Gas Act. The latter question was specifically not passed upon in those cases.

The facts of record in this case, viewed in the light of the decisions of the Supreme Court interpreting the Natural Gas Act, make it plain that petitioners' sales of natural gas are sales in interstate commerce for resale and that the findings and the conclusions of the Presiding Examiner must be affirmed in accordance with this opinion.

The Commission orders:

Each of the petitions filed herein is hereby denied; the sales of each petitioner described in its petition are hereby determined to be subject to regulation under the Natural Gas Act, and each of the petitioners herein is hereby determined to be a "natural-gas company" by reason of the sales described in its petition.

By the Commission. Commissioner Digby dissenting in part and concurring in part.

LEON M. FUQUAY,
Secretary.

Adopted: September 2, 1955.
Issued: September 9, 1955.

In the Matters of: DEEP SOUTH OIL COMPANY OF TEXAS, HUMBLE OIL & REFINING COMPANY, SHELL OIL COMPANY.

Docket No. G-2952
Docket No. G-5261
Docket No. G-4671

DIGBY, Commissioner, dissenting in part and concurring in part:

I cannot agree with the holding of the majority of this Commission that the Natural Gas Act applies to *all* sales of natural gas, whether to an interstate pipeline company or not, and whether occurring before, during, or after production or gathering has been completed, solely because some or all of the gas ultimately is transported in interstate commerce or sold in interstate commerce for resale by an interstate pipeline company. The holding represents an unwarranted assumption by this Commission of power not only not delegated to it but also specifically denied to it in Section 1(b) of the Act.

That the majority opinion represents an endeavor to assure jurisdiction by this Commission over all sales of natural gas ultimately transported in interstate commerce, or sold and ultimately resold in interstate commerce is apparent from its discussion of the regulation or taxing of "*physical activities, facilities or properties used in the production and gathering of natural gas*" by a state, and the further statement in the Examiner's decision that:

"It must be concluded, therefore, that *in those instances in which a state or state commission exercises no control*

regulation or limitation upon or over the price of gas at the well head, a sale of gas produced therefrom which results in the delivery thereof into a stream of commerce in which gas produced at a point in one state is transported and sold at a point outside thereof is a sale in interstate commerce of natural gas for resale within the meaning of the Natural Gas Act, whether, before, or after, such sale there shall be extracted therefrom liquid hydrocarbons and impurities, and whether such gas shall have been dehydrated, compressed or otherwise similarly processed." (Emphasis added.)

Further, the endeavor is made equally apparent inasmuch as the Examiner bases the existence of the "gap" upon the non-existence of State or Federal regulation of the price of the gas. The "gap" is conceived to be determined by the exercise of power to fix rates rather than by existence of power. The Examiner said: "'Interstate commerce' as the term is used in the Act is, at least, coextensive with the 'gap' to which the Court referred." The basic error is in making the assumption that it is the assertion and exercise by a state of power to fix prices, rather than the existence of the power which determines the "gap".

Not only does the majority not explain away the clear error of the Examiner, but it emphasizes its error when it states: (p. 11)

> "The existence or absence of such regulation (with respect to well head prices) is not determinative of our jurisdiction over the sales in question."

Lengthy quotations from *Interstate Natural Gas Company* v. *Federal Power Commission*, 331 U. S. 682, 690, and from *Phillips Petroleum Co.* v. *Wisconsin*, 347 U. S. 672, serve only to indelibly impress how clearly inapposite is the quotation to the proposition suggested by the majority. The issue does not concern and never has concerned the degree of regulation asserted by a state or its opposition

to federal regulation; the issue concerns the existence of state power at the time the Natural Gas Act was passed.

The majority determination accords to the decision of the Supreme Court in *Wisconsin, et al.*, v. *Phillips Petroleum Co.*, 347 U. S. 672, a holding with respect to issues not before the Court. It attributes to the Court a reversal by it of specific language in *Interstate Natural Gas Company* v. *Federal Power Commission, supra*, with respect to the intended scope of Section 1(b), and it effectively rewrites the delegation of power so that the Act is now made applicable to "the sale of natural gas *for* resale in interstate commerce."

Recognition must be had that there may be and are sales made prior to completion of production or gathering whereby the gas is committed to and in interstate commerce. It would not be proper, therefore, to fix the point of completion of production and gathering as a jurisdictional determinant. The use of "business of production or gathering" as a jurisdictional criterion was specifically proscribed in the *Phillips* case. Of necessity, there must be some criteria, valid in law and capable of reasonable application by which our power shall be measured. Determination whether there has been a commitment of natural gas in interstate commerce will not only mark the beginning of the interstate commerce by practical as well as legal considerations but also permit reasonable administration of the Act and give recognition to the clear congressional intention to regulate "sales in interstate commerce for resale" as well as to the production and gathering exemption.

It is not enough to state that determination of applicability of the Act to the sales in question must recognize the extent to which Congress has asserted its power over interstate commerce and that the extent of power is not in issue. The power delegated to this Commission with respect to jurisdiction is not co-extensive with the power of Congress over interstate commerce. Our function is to

administer reasonably the Natural Gas Act within the limits of our statutory authority. Whether we believe that more effective regulation could be had with power to regulate all sales of all gas which is ultimately consumed in states other than where produced should not deter a finding of lack of jurisdiction in proper instances; nor should it cause us to make an interpretation which could only be made by a juxtaposition of the language of the statute which will permit such complete regulation.

Congress, when it enacted the Natural Gas Act, proscribed jurisdiction over all sales other than those "in interstate commerce for resale". It did not delegate power to the Commission to regulate sales "affecting" interstate commerce, sales "for" interstate commerce, or sales which may "burden" or "obstruct" or "tend to burden or obstruct" interstate commerce. The majority, however, assert jurisdiction over all such sales. Section 1(a) of the Act, the Declaration of Policy, recites that Congress acted with respect to "regulation in matters relating to the transportation of natural gas and the sale thereof *in* interstate and foreign commerce." The scope of regulatory power delegated is specifically set forth in Section 1(b) of the Act:

> "(b) The provisions of this act shall apply to the transportation of natural gas in interstate commerce to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any *other transportation or sale of natural gas or to the local* distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

The scope of the Act must be determined by application of constitutional standards recognized at the time of enactment. In *Federal Power Commission* v. *Panhandle Eastern Pipeline Company*, 337 U. S. 498, 503, the Court said

that the Act's coverage is determingd by Section 1(b) and "does so in the light of the situation existing at the time." In *Federal Power Commission* v. *East Ohio Gas Company*, 338 U. S. 464, the Court said, with regard to the intended scope of the Act (p. 472), "but prior constitutional decisions, not what we have since decided or would decide today, form the measure of the gap which Congress intended to close by this Act. *Illinois Gas Co.* v. *Public Service Co.*, 314 U. S. 498, 508; and see *Parker* v. *Motor Boat Sales*, 314 U. S. 244, 250."

Determination of "in interstate commerce" cannot rest upon the fact that at some subsequent time some of the gas may in some way become a part of the stream of natural gas being transported or sold in interstate commerce for resale. Nor is it sufficient that at the time of sale there was an awareness that the subject matter of the sale would ultimately so move. *Bracht* v. *San Antonio & A. P. R. Co.* (54 U. S. 489) cited by the majority involved a shipment by petitioner from Ingleside, Texas, to himself at Dallas, Texas. When the goods reached Dallas he requested shipment to Kansas City. It was held that an action against the first carrier would not lie nder the Interstate Commerce Act as the shipment was purely intrastate as far as it was concerned. Yet, if the majority of this Commission is correct, the entire movement was a continuous process and the first carrier should have been engaged in interstate commerce as regards the shipment. The point at which reassignment, in our cases resale in interstate commerce to an interstate pipe line, occurs is not regarded by the majority as of any significance. The *Bracht* case emphasizes the real meaning of "interstate commerce for resale" in the Natural Gas Act.

Work or services necessary to put the subject matter in a state of preparation and readiness for transportation is not of itself work or services rendered *in* interstate commerce. The point of time or place at which the journey "in interstate commerce" begins has been held con-

sistently to be that point at which the subject matter has been "launched on its way to another State, or committed to a common carrier for transportation to such State * * *" (*Coe* v. *Errol*, 116 U. S. 517, 528).

In *Oliver Iron Mining C* v. *Lord*, 262 U. S. 172, three-fourths of the company's iron ore mining was open pit mining. Empty railroad cars were run from the railroad yards into the pits, loaded and returned to the yards, where they were hooked to trains which carried them into other states. The state levied an occupation tax on the company's mining operations. It was held that the iron ore did not enter interstate commerce until *after* the mining was completed. The handling of the railroad cars to and from the mines was held to be a part of the mining operations.

In *Chassanoil* v. *Greenwood*, 291 U. S. 584, there was involved an ordinance of the City of Greenwood which levied a tax on persons engaged in the buying and selling of cotton in that city. Chassanoil was engaged in buying cotton in Greenwood for sale and shipment to other states and counties. The cotton was grown and ginned in various parts of the state and moved to warehouses in Greenwood. There the cotton was compressed and sold on warehouse receipts to purchasers. When brokers buy the cotton they have orders for its sale and delivery in other states. It was contended that all the cotton is in interstate or foreign commerce from the moment it leaves the gin, or at least from the moment it is purchased in Greenwood by the broker. The Court held (p. 587) that, "Ginning cotton, transporting it to Greenwood, warehousing, buying and compressing it there, are each, like the growing of it, steps in preparation for the sale and shipment in interstate or foreign commerce, but each step *prior to the sale and shipment* is a transaction local to Mississippi, a transaction in intrastate commerce."

In *Federal Compress and Warehouse Company* v. *McLean*, 291 U. S. 17, where a license tax on the operation of

cotton compresses and warehouse in the circumstances described in *Chassanoil* v. *Greenwood* was sustained, the Court said (p. 21):

> "Its journey interstate does not begin and so it does not become exempt from local tax until its shipment to points of destination outside the state."

The fact that an article is intended for export to another state does not render it "*in* interstate commerce. *Crescent Cotton Oil Company* v. *Mississippi*, 257 U. S. 129.

These decisions must be compared with *Currin* v. *Wallace*, 306 U. S. 1, and *United States* v. *Darby*, 312 U. S. 100, wherein the issue was the permissible assertion of congressional power under the commerce clause. See also *Wickard* v. *Filburn*, 317 U. S. 111.

Federal Trade Commission v. *Bunte Brothers*, 312 U. S. 349, is illustrative of judicial recognition of the sharp line of demarcation between existence of Congressional power and exercise of that power. In that case, the Federal Trade Commission attempted to apply the Act to certain sales.

The Federal Trade Commission Act, like the Natural Gas Act, delegates power to the Commission with respect to matters "in" interstate commerce. Holding that the Commission asserted power in excess of that delegated by Congress, the Court said (p. 355):

> "An inroad upon local conditions and local standards of such far-reaching import as is involved here, ought to await a clearer mandate from Congress. The problem now before us is very different from that which was recently presented by United States v. Darby [312 U. S. 100]. We have there to consider the full scope of the constitutional power of Congress under the Commerce Clause in relation to the subject matter of the Fair Labor Standards Act. This case sents the narrow question of what Congress did, not what it intended to do. And we merely hold that to read 'unfair methods of competition' in [interstate] commerce a though it means 'unfair methods of com-

petition in any way affecting interstate commerce', requires, in view of all relevant considerations, much clearer manifestation of intention than Congress has furnished."

Eureka Pipe Line Company v. *Hallanan*, 257 U. S. 26, *United Fuel Gas Co.* v. *Hallanan*, 257 U. S. 277, and *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, do not provide a different criteria. In each case the subject matter related to a course of business, or transaction which was an inherent part of such business, having as its purpose transportation of goods in interstate commerce.

In the *Eureka Pipeline Co.* and *United Fuel Gas Co.* cases the State of West Virginia prohibited transportation of oil in pipelines unless a charge of 2¢ per barrel had been paid. The charge was not upon the producer but upon the pipeline company which operated a pipeline in West Virginia which connected with and transported oil to pipelines in Ohio, Kentucky and Pennsylvania. The companies were required by law to keep enough oil in tanks and pipes to satisfy credit for oil purchased but not tendered for shipment. The Court held that "the pipeline company, not the producer, was the master of the destination of any specific oil. Therefore, its intent and action determined the character of the movement from its beginning and neither the intent nor the direction of the movement changed." The charge was held invalid as a regulation of interstate commerce.

The case does not hold that each sale by the producer was in interstate commerce. It holds merely that where the business (transportation of oil) is predominately interstate, the intrastate sale of oil could not render the business intrastate. This basic principle of law has long been recognized.

In the *Dahnke-Walker Milling Company* case, plaintiff, a Tennessee flour and feed mill operator, contracted with defendant at Hickman, Kentucky, for the purchase and

sale of a crop of wheat, payment to be made in Kentucky and delivery to be on board cars of common carriers to be shipped to Tennessee. The defense asserted to an action for breach of contract was that plaintiff had not complied with a Kentucky statute imposing requirements upon a foreign corporation doing business within the state and that the contract was made in the course of intrastate business.

The Court held that the nature and purpose of the transaction was doing business in interstate commerce. It was said (p. 290):

> ". . . Where goods are purchased in one State for transportation to another, the commerce includes the purchase quite as much as it does the transportation."

Further, the Court stated (p. 291):

> ". . . In no case has the Court made any distinction between buying and selling or between buying for transportation to another State and transporting for sale in another State. Quite to the contrary, the import of the decisions has been that if the transportation was incidental to buying or selling it was not material whether it came first or last."

The foregoing is clear recognition that the intent of the contracting parties to commit the goods in interstate commerce is a controlling factor. The contract involved in this case is a parallel to the contracts for the sale of natural gas between Humble and El Paso, which sale I hold to be in interstate commerce because there is a commitment of the gas to an interstate pipeline company.

The error of the majority in determining that the "gap" is to be measured by failure by a State to exercise power, and accordingly, holding Congressional exercise of power to embrace all sales becomes more apparent when the specific exemption of production or gathering and decisions of the Supreme Court with regard thereto are considered.

The decisions indicate that Congress intended "in interstate commerce" to refer to sales of natural gas to interstate pipeline companies for resale.

The Court, in *Federal Power Commission* v. *Hope Natural Gas Company*, 320 U. S. 591, said, with respect to the evils intended by Congress to be remedied by the Act (p. 610):

> ". . . The investigation of the Federal Trade Commission had disclosed that the majority of the pipeline mileage in the country used to transport natural gas, together with an increasing percentage of the natural gas supply for pipeline transportation, had been acquired by a handful of holding companies. State Commissions, *independent producers*, and communities having or seeking the services were growing quite helpless against these combinations. These were the types of problems with which those participating in the hearings were preoccupied. Congress addressed itself to those specific evils." (Emphasis added.)

Thus, the production and gathering of natural gas was not that portion of the natural gas industry which was the source of evils sought to be remedied. Further, "The Act was drawn with meticulous regard for the continued exercise of State power, not to handicap or dilute it in any way." *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission*, 332 U. S. 507, 518. The scheme was of cooperative action between Federal and State agencies.

The Court, in *Colorado Interstate Gas Company v. Federal Power Commission*, 324 U. S. 581, did not pass on the issues here presented. It did hold that the Section 1(b) exemption was to be given meaning. It stated (p. 603) that the "provision precludes the Commission from any control over the activity of producing or gathering natural gas."

In *Federal Power Commission* v. *Panhandle Eastern Pipe Line Company*, 337 U. S. 498, the Commission sought to restrict the production and gathering exemption to

purely physical activities of production and gathering. The Court held, however, (p. 504) that such a narrow meaning could not be ascribed to the words.

The Court, in *Interstate Natural Gas Company* v. *Federal Power Commission, supra*, recognized (p. 690) that there are sales "though technically consummated in *interstate* commerce," which may be "made during the course of production and gathering and are so closely connected with the local incidents of that process as to render rate regulation by the Federal Power Commission inconsistent or a substantial interference with the exercise by the State of its regulatory functions" that the jurisdiction of the Federal Power Commission does not attach. (Emphasis added.)

The majority of this Commission, however, refuses to recognize the existence of any sales of natural gas which is ultimately resold *in interstate commerce* which are not subject to the jurisdiction of the Commission. The *Phillips* decision did not disapprove or negative the language of a unanimous Court in the *Interstate* case. To the contrary, it cited and relied upon the case as controlling.

Acceptance of the hypothesis of non-jurisdictional sales in production and gathering defeats the hypothesis or assumption of the completeness of Commission jurisdiction with regard to all sales of natural gas where at least some portion of such gas eventually finds its way into the full-stream of interstate commerce in the transmission lines of an interstate transmission pipeline company.

The *Interstate* case, as such, merely holds, as does the *Phillips* case, that sales *by a producer to an interstate pipeline company* are subject to regulation under the Act.

In *Interstate Natural Gas Company* v. *Federal Power Commission, supra*, the nature of the purchases for sales was described as follows (pp. 684-5):

"Gas produced from petitioner's wells flows into petitioner's system of field pipe lines, moving first into branch lines, then into trunk lines, and finally into the main trunk

lines from which delivery is made to the three purchasing companies. During the course of this movement, petitioner purchases gas from other producers in the field which gas is introduced into petitioner's system at designated points and is there commingled with the gas moving from petitioner's own wells. By far the larger part of the gas so purchased by petitioner has been gathered from various wells of the selling companies before delivery to petitioner is made. The gas moves through petitioner's system at well pressure. Shortly after the sales in question are completed, the gas is directed through the compressor stations of the purchasing companies and is there subjected to increased pressure in order that it may be moved to markets as far distant as Illinois. The entire movement of the gas from the wells to the purchasing companies through the compressor pumps and across the state lines is a continuous process without interruption for storage, processing or for any other purpose. All the gas sold in these transactions is destined for ultimate public consumption in States other than Louisiana."

With respect to such sales, the Court concluded (p. 688):

> "Clearly the sales in question were a part of commerce being carried on between points in Louisiana and points in other States. There is nothing in that language to suggest that Congress intended that sales consummated before the gas crosses a State line should not be regarded as being 'in' such commerce."

Regarding production and gathering, the Court said (p. 692):

> "The gas moved by petitioner to the points of sales consisted of gas produced from petitioner's wells commingled with that produced and gathered by other companies and introduced into petitioner's pipeline system during the course of the movement. By the time the sales are consummated, nothing further in the gathering process remains to be done. We have held that these sales are in interstate commerce. It cannot be doubted that their regulation is predomi-

nantly a matter of national, as contrasted to local concern."

Speaking with respect to the *Interstate* case, the Court in the *Phillips* case remarked (pp. 680-1), that it had based its decision "on the broader ground that sales *in interstate* commerce for resale by producers *to interstate pipeline companies* do not come within the 'production or gathering' exemptions." (Emphasis supplied.)

The Supreme Court in *Natural Gas Pipe Line Company of America* v. *Panoma Corporation*, 349 U. S. 44, decided April 11, 1955, clearly evidenced the intended holding of the *Phillips* case when it stated:

> "In this case Oklahoma has attempted to fix a minimum price *to be paid for natural gas, after its production and gathering has ended, by a company which transports the gas for resale in interstate commerce.* We held in Phillips Petroleum Company v. Wisconsin, 347 U. S. 672, 74 S. Ct. 792, 98 L. Ed. 1035, that such a sale and transportation cannot be regulated by a State but are subject to the exclusive regulation of the Federal Power Commission. The Phillips case, therefore, controls this one." (Emphasis supplied.)

The majority, however, seeks to read into that decision a determination of issues not before the Court.

The foregoing considerations lead to but one logical conclusion, *viz.*, that the sales intended to be embraced by the Natural Gas Act are those by which natural gas is committed to interstate commerce. Otherwise, Congress has asserted its power over interstate commerce to the fullest as regards all matters incident to production or gathering save the regulation of the physical production and protection of correlative rights. This the Supreme Court has held it did not do.

The instant proceedings present for determination the jurisdictional status of several types of sales of natural gas.

The petition of Humble Oil & Refining Company seeks status determination with respect to sales of casinghead gas. The sales may be divided into three appropriate categories:

(1) Sales to a plant operator not an interstate transmission company under a standard casinghead gas contract (Ex. 26);

(2) Sales to an interstate pipeline company (El Paso Natural Gas Company) under the El Paso form of casinghead gas contract (Ex. 27); and

(3) Sales to a producer and gatherer not also an interstate transmission company pursuant to division orders (Ex. 28).

The petition of Shell Oil Company seeks status determination with respect to sales of casinghead gas and gas well gas. The sales may be divided into three appropriate categories:

(1) Sales of casinghead gas to a producer and gatherer not also an interstate transmission company (Phillips Petroleum Company).

(2) Sales of casinghead gas to one who is or upon commencement of sales will be an interstate transmission company (Texas Gas Pipeline Corporation); and

(3) Sales of gas well gas to one who is or upon commencement of certain sales will be an interstate transmission company (Texas Gas Pipeline Corporation).

The petition of Deep South Oil Company of Texas seeks status determination with respect to sales of casinghead gas and full-stream gas. The sales may be divided into three appropriate categories:

(1) Sales of casinghead gas to a producer and gatherer not also an interstate transmission company (Texas Gas Corporation);

(2) Sales of full-stream gas to a producer and gatherer not also an interstate transmission company (Texas Gas Corporation); and

(3) Sales of gas from a gas distillate well to one who is an interstate pipeline transmission company (United Gas Pipe Line Company).

(3) Sales of gas from a gas distillate well to one who is an interstate pipeline transmission company (United Gas Pipe Line Company).

The sales made by Humble covered casinghead gas, or gas produced in association with oil from oil wells. Humble's typical operations for producing raw casinghead gas include the passage of the mixture of oil and gas which issues from the wellhead through flow lines from the respective wells to the lease separator. The crude oil and heavier liquids settle to the bottom of the separator and are drained off leaving a gaseous mixture of hydrocarbons known as raw casinghead gas.

We are here concerned only with the disposition of the casinghead gas, the principal component of which is methane (Tr. 137), the same material which constitutes fuel gas, the bulk of gas in interstate transmission lines (Tr. 138, 376). The record is replete with testimony establishing that safe and efficient movement of the gas through transmission lines requires that the compound be processed to remove those elements and that casinghead gas cannot be compressed and transported to the markets until this has been done. In addition, the various hydrocarbons constituents of the casinghead gas have intrinsic value which makes their recovery economically desirable (Tr. 376). Only the residue gas, composed principally of methane, is suitable for domestic and industrial use (Tr. 376).

Humble, in each of the 48 transactions under consideration, disposes of the casinghead gas by sale and delivery thereof through a meter at or near the lease separator.

The commodity sold and delivered to the purchaser at this point is a gaseous compound made up of numerous hydrocarbons. The price to be paid for the casinghead gas is based upon the amounts received by the processor from his sale of the liquid products recovered from the compound plus a portion of the net proceeds from his sale of any remaining residue gas.

The casinghead gas at the point of delivery passes into the "plant gathering lines" of the purchaser, and moves, commingled with casinghead gas from other leases, into a gas processing plant. In the plant the mass of casinghead gas is put through various mechanical and chemical operations which result in the segregation of the various hydrocarbon constituents and the removal of objectionable impurities and foreign material from the residue gas. The residue gas or methane is then ready for delivery to market.

All of the casinghead gas sold by Humble follows the above-outlined course from the wellhead to the outlet of the processing plant. The categorical differentiation noted at the outset arises from differences in the type of purchaser and differences in the type of contract of sale.

In the first category, covering 36 sales, the purchaser is a plant operator, engaged in the business of purchasing and at times producing casinghead gas, gathering and processing said gas, and selling the resulting products at the outlet of the plant. The sales to the plant operator are made pursuant to Standard Form Casinghead Gas Contracts (Ex. 26; Tr. 396). Title and control pass at the point of delivery, at or near the lease separator, with the exception of two deliveries which are made 2,000 or 3,000 feet from the separator on or adjoining Humble's lease (Tr. 397). Consideration is based upon the proceeds received from the plant operator's sales, and the richness and volume of casinghead gas delivered from the lease (Tr. 398). Disposition of the residue gas is not within the control of Humble. The purchaser may dispose of such

gas as it pleases. It may commit some or all of the gas "in interstate commerce" or it may not.

This sale precedes gathering, processing and recovery of the merchantable fuel gas product which is fit to be committed to interstate transmission; it precedes the sale which does commit some or all of such gas in interstate commerce. It cannot be said to be a "sale *in* interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use * * *." Such sale is patently not the type of sale held by the Supreme Court to be within the scope of the Natural Gas Act in the *Phillips* and *Interstate* cases.

The second category covers sales to an interstate pipeline company (El Paso Natural Gas Company) pursuant to a contract known as the El Paso form of casinghead gas contract (Ex. 27). The interstate pipeline company owns and operates the processing plant and has the right under the contract to take all surplus residue gas resulting from said processing into its pipe line. The revenue to be received by the producer for the casinghead gas is arrived at in substantially the same manner as in the Standard Form Casinghead Gas Contract, the exception being that the revenue to be received for sales of residue gas is a fixed amount depending upon the depth of the producing formation and the date of taking. Title and control pass at the point of delivery at or near the lease separator.

The distinguishing feature of the sales to El Paso is the contractual provision whereby all residue gas is committed to interstate transmission. A sale of this type, made pursuant to a contract executed between a working interest owner, or a lease or unit operator having power under an operating agreement to make such sale, and an interstate transmission pipeline company whereby the gas is committed to the interstate transmission system, appears to be the type of sale contemplated by the Natural Gas Act as interpreted by the *Phillips* decision, 347 U. S. 672, and, therefore, subject to the jurisdiction of the Commission.

The third category of Humble's transactions covers the sale by a lease operator of gas attributable to non-operating working interests owned by Humble. These sales are made pursuant to division orders. The particular division order here is known as the Phillips division order and authorizes the lease operator to dispose of, either by purchase or sale, Humble's share of casinghead gas along with other casinghead gas produced from the lease (Ex. 28). The lease operator in these instances contracts with the purchaser, a plant operator not engaged in interstate transmission, for the sale of all casinghead gas produced from the lease. Humble's transactions in connection therewith, not being a commitment into an interstate transmission system, would also fall outside the scope of the Natural Gas Act.

Shell Oil Company is seeking status determination with respect to sales of both casinghead gas and gas well gas. These sales fall into three categories.

The first category covers sales of casinghead gas produced from 19 oil wells in the McElroy Field, Crane and Upton Counties, Texas. The operations necessary to the production of this casinghead gas are substantially the same as those hereinbefore outlined in describing Humble's sales of casinghead gas. Shell sells to Phillips Petroleum Company, which gathers and processes the casinghead gas produced from Shell's leases, together with casinghead gas from other leases. Delivery is made through a meter adjacent to the separator on the Shell lease (Ex. 11). Phillips, after processing, markets the products and residue gas in both intra and interstate commerce.

This sale by Shell is analogous to the sales in the first category by Humble, and, therefore, falls within the same jurisdictional ruling, *i.e.*, not subject to the jurisdiction of the Commission.

Shell also proposes to make sales of gas produced in the Nome Field, Jefferson County, Texas, to Texas Gas Pipe Line Corporation, an interstate transmission company (Tr. 117). The sales from this field to Texas Gas Pipe Line have been hereinbefore categorized as two distinct

types of sales, one covering casinghead gas and the other covering gas well gas. However, since both types of sales are covered by one contract (Ex. 9), they should be treated as one category.

It is significant in an analysis of Shell's sale of gas, both casinghead and gas well gas, to Texas Gas Pipe Line to note that Texas Gas Pipe Line Corporation is a subsidiary of Texas Gas Corporation (Tr. 85, 99). The parent company in this instance owns the processing plant through which the gas to be purchased by Texas Gas Pipe Line must flow to be processed and prepared for the interstate transmission and ultimate industrial and domestic use (Tr. 100).

By the terms of the gas sale contract between Shell Oil Company, as Seller, and Texas Gas Pipe Line Corporation, as Buyer, Shell "commits" to the performance thereof all of its "interest in gas in the non-associated gas reservoirs and in the associated gas or gas caps and the casinghead gas to be produced from the oil reservoirs situated in the Nome Field * * *." (Ex. 9) Thus, Shell's sales from the Nome Field are to an interstate transmission pipeline company, and, being committed to interstate commerce, are within the class of sales hereinbefore indicated as properly jurisdictional.

Deep South produces gas from both distillate and oil wells in the Big Hill Field, Jefferson County, Texas, which it sells to Texas Gas Corporation. Gas from a distillate well is known as "wet gas" or "full stream gas." It differs from casinghead gas principally in that it contains hydrocarbons of such nature that they condense at normal atmospheric pressure, whereas casinghead gas is produced in association with oil.

Texas Gas Corporation, the purchaser of gas produced by Deep South from the Big Hill Field, is engaged in the business of gathering and processing gas in the State of Texas, for resale to both intra and interstate transmission pipe-line companies. It owns and operates extensive facilities in this connection all within the State of Texas.

The sale by Deep South to Texas Gas Corporation of both casinghead and full stream gas is made pursuant to a single gas purchase contract. (Ex. 13) The contract provides for delivery at the well and for a fixed price for Mcf for "separator overhead gas".

Deep South's reserves are dedicated to the performance of this contract, but title and control pass to Texas Gas Corporation at the point of delivery. The record indicates that Texas Gas Corporation without knowledge or consent of Deep South subsequently dedicated (committed) the reserves covered by its contract with Deep South to the performance of Texas Gas Corporation's contract of sale to Texas Eastern Transmission Company, an interstate transmission pipe-line company. (Tr. 189-191).

The above described sale by Deep South, though hereinbefore divided into two categories, may be treated as one for the purpose of status determination. It is comparable to the sales in the first category by both Humble and Shell and the status determination thereof is controlling this sale by Deep South, *i.e.*, non-jurisdictional.

The third category of sales by Deep South covers production from a gas distillate well in the Refugio Field, Refugio County, Texas, which is sold to United Gas Pipe Line Company, an interstate transmission pipe line company. The contract under which this sale is made (Ex. 16) provides for delivery at an appropriate point on United's line and for payment at a fixed price per Mcf. Delivery is made at the edge of Deep South's lease (Tr. 335), about 500 to 600 feet beyond the separator. (Tr. 347). United then moves the gas to a plant for processing after which it moves the residue gas to its compressor station at Refugio (Tr. 336). The record shows that the commingled gas stream that moves out of the compressor station goes into United Gas Pipe Line's "system" (Tr. 349 and 350). No evidence was offered relative to United's system. In this respect the majority properly conclude that the burden was upon Deep South to establish that the gas so sold was not transported or sold in interstate commerce for resale.

This sale made pursuant to a contract by which Deep

South "commits" its gas to an interstate transmission pipe-line company is analogous to Humble's sale to El Paso and Shell's sale to Texas Gas Pipe Line Corporation, and must receive similar jurisdictional determination.

Having regard for the history of the legislation, the existing evils sought to be remedied thereby, the intention not to invade the power of the several states, the very pertinent language of the Court in the *Panhandle* cases, particularly 337 U. S. 498, the *Interstate* case and *Colorado Interstate* case, it must be concluded that Congress did not intend "in interstate commerce" to embrace in all instances the movement of the methane through the sands toward the well bore, through the well pipe, separators, dehydrators, scrubbers, and many other pieces of processing equipment, the outlet side of a processing plant into a transmission line of the interstate transmission company and on the the ultimate burner tips.

The majority has determined that, in every instance where it can be demonstrated that any part of natural gas sold as a well head may become a part of a commingled stream which crosses a state line, the sale of the entire amount is a sale in interstate commerce for resale. Great reliance is placed upon the testimony of Mr. Schilthuis, a witness for Humble Oil & Refining Company; it is said (p. 4) that his testimony is "most conclusive". It is conclusive only that at some future time some other company may effect a sale of some part of the gas to an interstate pipe-line company. The issue is whether the sale itself is in interstate commerce, not whether some subsequent sale is in interstate commerce.

It is clear that Congress intended there should be a line of demarcation having a penumbra of sufficient breadth to permit reasonable administration of the Act in the public interest without effectively negating the exemption of production or gathering and, at the same time, to give full recognition and effect to the salutary purposes of the Act. Certainly, it would appear proper to hold that in those instances where sales of natural gas are made pursuant to a

contract executed by and between the owner of a working interest, or by an operator pursuant to power contained in an operating agreement, and an interstate pipe line transmission company, there has been a commitment of natural gas "in interstate commerce" for resale and the jurisdiction of the Commission attaches. Also, in those instances where sales of natural gas are made pursuant to a contract executed by the owner of a working interest or by an operator pursuant to power in an operating agreement, dedicating his share of all natural gas to be produced from designated reserves to an interstate pipe-line transmission company, there has been a commitment of natural gas "*in* interstate commerce" and the jurisdiction of the Commission attaches.

The broad language in the *Phillips* case, *viz.*, "Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during or after transmission by an interstate pipe-line company", cannot properly be considered as holding that the flow of natural gas from the sands and through the well is "in interstate commerce" and thus the sale at the wellhead is, in all instances, a sale in interstate commerce for resale, merely because some portion or all of the gas may ultimately find its way into the interstate pipe-line transmission company's lines. To so hold effectively rewrites pertinent Sections of the Act to redefine our jurisdiction to encompass "sales of natural gas for resale in interstate commerce" or "sales of natural gas ultimately resold in interstate commerce."

. . . . . .

(S. L. Digby),
Commissioner.

Filed: September 2, 1955.

Issued: September 9, 1955.

Excerpt from the Natural Gas Act. (15 U. S. C. 717b) § 1(b):

"The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 449.

SHELL OIL COMPANY,

Petitioner,

v.

FEDERAL POWER COMMISSION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI

PETITION FOR REHEARING
BY
SHELL OIL COMPANY

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PETITION FOR REHEARING BY SHELL OIL COMPANY

The petition for certiorari was filed herein on September 11, 1957. At that time jurisdiction had been noted in *Cities Service Gas Company* v. *State Corporation Commission of Kansas,* No. 85. In the *per curiam* order issued in No. 85 on January 20, 1958 the judgment of the Supreme Court of Kansas was reversed. One week later, on January 27, 1958, certiorari was denied in this case.

The sequence and timing of events leads us to believe the Court felt the issue in this case was necessarily governed by *Cities Service.* That, however, is not the case.

The issue involved here has never been decided by this Court. It was not presented in *Cities Service* or any other case. The issue which this case presents is:

> Does a pre-gathering field sale of casinghead gas by the producer *to a processor who is not an interstate*

pipe line company constitute a sale of natural gas in interstate commerce merely because the processor later sells a portion of one of the by-products to an interstate pipe line company?

The question is not whether this pre-processing sale is within the production and gathering exemption of Section 1(b) of the Natural Gas Act. The issue is whether such a sale is "in interstate commerce" as provided in Section 1(b) of the Act. If not, the Act simply does not apply. The Commission's jurisdiction emanates solely from the Act, not from the impotence of State power over sales admittedly in interstate commerce. There is still no decision by this Court holding that a pre-processing sale of the type here involved is a sale in interstate commerce within the affirmative coverage of Section 1(b) of the Act. No such issue was presented in *Cities Service.*

In *Cities Service* some of the gas was purchased at the wellhead; the balance was purchased after gathering. ***All of the sales were made directly to an interstate pipe line company for immediate flow, without processing, into the interstate stream.*** To the extent that processing was involved, it took place prior to the purchase by Cities Service.[1] Such sales are clearly in interstate commerce and thus within the preempted price regulatory power of the Commission. But that is not this case. A state regulation fixing a minimum price for natural gas at the wellhead may constitute a burden upon interstate commerce or an interference with the jurisdiction of the Federal Power Commission even though the Act does not extend its applicability to sales prior to gathering and processing. Therefore, the question whether the Federal Power Commission has jurisdiction over sales prior to gathering and process-

[1] Jurisdictional Statement by Cities Service, p. 6.

ing, which sales we maintain are not "in interstate commerce", is entirely different from the issue involved in the *Cities Service* case.

The sale of casinghead gas involved in this case was consummated at the field separator before gathering; the purchaser was not an interstate pipe line company but was the owner and operator of a gasoline processing plant located in the field; at the time and place of sale the casinghead gas could not have been used as commercial fuel nor was it suitable for transportation in interstate pipe lines; the contract under which the casinghead gas was sold specified that the gas was conveyed "for the purpose of manufacturing gasoline or such other product or products as may be manufactured at Buyer's plant"; the purchaser gathered the casinghead gas to its processing plant and there subjected it to a manufacturing process[2] which resulted in the manufacture of liquid hydrocarbons and residue gas; and some of the residue gas was used as fuel in the plant, some returned to the leases, and some sold by the processor to an interstate pipeline company.

Thus the question posed here was not before the Court in *Cities Service* nor in any other case. The issue is of the utmost importance and consequence. A very substantial part of all casinghead gas and "wet" gas being sold today is sold under contracts similar if not identical to that involved here. The issue in this case was framed with the view to obtaining a clear-cut answer by this Court to a question which has confounded the industry since *Phillips*

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[2] This processing is not a mere increasing of pressure as was involved in *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U. S. 682. On the contrary, this processing is an intricate undertaking which actually changes the character, utility and value of the casinghead gas. See *Michigan-Wisconsin Pipeline Co.* v. *Calvert*, 347 U. S. 157, footnote 6, in which this Court recognized that processing of gas is analogous to the conversion in generators of mechanical energy into electrical energy.

Petroleum Co. v. *Wisconsin et al.* (1954) 347 U. S. 672. The order in *Cities Service* does not furnish the answer. Nor does the denial of certiorari.

This case presents an issue of sufficient importance to be judged on its own record, and too important to be cast into limbo, without benefit of audience, merely because it reached the seat of judgment simultaneously with one with a different past and a different issue who, though permitted to speak, was found wanting in the requisites for entrance.

It is respectfully urged that a rehearing be granted and that the petition for writ of certiorari be granted.

Respectfully submitted,

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New York, N. Y., February 19, 1958.

Certificate of Counsel.

I certify that the foregoing Petition for Rehearing is presented in good faith and not for delay and that said Petition is restricted to intervening circumstances of substantial or controlling effect.

I also certify that the foregoing Petition for Rehearing was served upon Respondent, the Federal Power Commission, by mailing a copy thereof, postage prepaid, to each of the following attorneys for Respondent on the 19th day of February, 1958:

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